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August 7, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Antidumping Duty Investigation of Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum

SUMMARY:

We have analyzed the comments submitted in the investigation of steel wire hangers ("hangers") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China, 73 FR 15726 (March 25, 2008) ("Preliminary Determination") and Steel Wire Garment Hangers from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 20018 (April 14, 2008) ("Amended Preliminary Determination"). Additionally, the Department conducted verifications of both respondent companies between May 21, 2008, and June 6, 2008. Upon the release of the verification reports, we invited parties to comment on our Preliminary Determination and Amended Preliminary Determination. Based on our analysis of the comments received and the results of verification, we have made changes from the Preliminary Determination and Amended Preliminary Determination.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments on the Preliminary Determination and Amended Preliminary Determination.

Discussion of the Issues:

Comment 7: Steel Scrap Offset Surrogate Value

Company Specific Comments

Comment 8: Shaoxing Metal Companies[1]

A. Total Adverse Facts Available ("AFA") for the Shaoxing Metal Companies
B. Total AFA for Quantity and Value ("Q&V") of U.S. Sales
C. Partial AFA for Sales Trace A[2]
D. Partial AFA for Water
E. Partial AFA for White Paper, Brown Paper, and Steel Scrap Sales
F. Reporting of Wire and Wire Rod
G. Management and Administrative Labor
H. Retroactive Implementation of Amended Preliminary Determination

Comment 9: Shanghai Wells[3]

A. Demurrage Revenue
B. Commission Revenue
C. Wells USA's Indirect Selling Expenses
D. Treatment of Water and Lubricant Lard
E. Treatment of Market Economy ("ME") Purchase
F. Elimination of Credit Expenses from Constructed Export Price ("CEP") Profit
G. Sales to Customer X: Export Price ("EP") or CEP[4]
H. Payment Terms
I. Truck Freight and Brokerage

[1] The Shaoxing Metal Companies consist of: Shaoxing Gangyuan Metal Manufactured Co., Ltd. ("Gangyuan"), Shaoxing Andrew Metal Manufactured Co., Ltd. ("Andrew"), Shaoxing Tongzhou Metal Manufactured Co., Ltd. ("Tongzhou"), and Company X. The Department normally does not consider a respondent's supplier's name to be business proprietary information. However, in this instance, counsel for the Shaoxing Metal Companies bracketed this information as business proprietary and the Department did not challenge this treatment. See Memorandum to the File from Julia Hancock, Senior Case Analyst: Program Analysis for the Final Determination of Antidumping Duty Investigation of Steel Wire Garment Hangers from the People's Republic of China: Shaoxing Metal Companies, (August 7, 2008) ("Shaoxing Final Analysis Memo") for more information regarding the identity of this company; Shaoxing Metal Companies' Request for Collapsing, (February 26, 2008) at 15.

[2] Because of the proprietary information of this sales trace, for further information, please see the Shaoxing Metal Verification Report at 21.

[3] Shanghai Wells Hanger Co., Ltd. ("Shanghai Wells").

[4] The name of Customer X is business proprietary information. See Memorandum to the File from Irene Gorelik, Senior Case Analyst: Program Analysis for the Final Determination of Antidumping Duty Investigation of Steel Wire Garment Hangers from the People's Republic of China: Shanghai Wells, (August 7, 2008) ("Shanghai Wells Final Analysis Memo") for more information regarding the identity of this customer.

DISCUSSION OF THE ISSUES:

Comment 1: Scope

Willert[5] argues that its products 1) differ significantly, both in physical characteristics and packaging, from the merchandise currently within the scope, as defined by Petitioner, (2) do not fall within the scope of products for which Petitioner seeks relief, and (3) do not properly fall within the scope of this investigation, and thus the Department should clarify the scope of the investigation to expressly exclude certain vinyl dipped garment hangers manufactured, exported and/or imported by Willert. In its July 7, 2008 letter, Willert requested the Department clarify the scope of the investigation for the final determination and any subsequent antidumping order to expressly exclude certain vinyl dipped garment hangers from China, imported under HTSUS subheading 7326.20.00.20, entirely coated with vinyl with no exposed metal ends, packaged in chipboard wrappers with UPC codes for retail sale in quantities of 15 or less, marketed as "Space Saver" or other retail private label packaged hangers, and bearing identification as items WHxxx, WMxxx, R41032, or R80113.

Additionally, Willert argues that, in past cases, the Department has excluded certain products for which the petitioning party has not sought relief, notwithstanding when an interested party submits a scope clarification request.[6] Willert further argues that the U.S. Court of International Trade ("CIT") does not preclude the Department from clarifying scope language as long as the clarification narrows the scope definition rather than expands it because of due process concerns.[7] Willert contends that its company-specific products, along with company-specific model numbers, marketing nomenclature, and packaging specifications should be expressly noted in the scope language as an exclusion from the scope.

In its rebuttal brief, Petitioner[8] stated that, despite attempts to work with Willert's counsel to craft mutually agreeable scope exclusion language, no agreement was reached and Petitioner remains concerned with the potential circumvention of the scope on the part of other producers and importers of vinyl-coated subject merchandise to avoid antidumping duties.

Department's Position:

The Department disagrees with Willert with respect to its scope modification request. The scope of this investigation, as articulated in the initiation of this investigation, was taken directly from Petitioner's petition. See Petition for the Imposition of Antidumping Duties on Steel Wire Garment Hangers from the People's Republic of China, dated July 31, 2007; Steel Wire Garment Hangers from the People's Republic of China: Initiation of Antidumping Duty Investigation, 72 FR 52855 (September 17, 2007) ("Initiation Notice"). In the Initiation Notice, interested parties were invited to submit scope comments by October 1, 2007. See Initiation Notice, 72 FR at

[5] Willert Home Products, Inc. and Willert Home Products, (Shanghai) Co., Ltd. (collectively, "Willert").

[6] Willert cites to Nails from the PRC, 73 FR 33977.

[7] Willert cites to Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China, 73 FR 6479 (February 4, 2008) ("Sodium Hex") and accompanying Issues and Decision Memorandum at Comment 1.

[8] M&B Metal Company, Ltd. ("Petitioner").

52855-52856. The Department received none. The first scope comments submitted for this investigation were from Willert on July 7, 2008, one month prior to the final determination.

In order to ensure compliance with an antidumping duty order and to prevent circumvention, it is incumbent on the Department that scope language is clear and free from ambiguity. In crafting the scope of an investigation, the Department not only focuses on creating scope language that contains a clear physical description of the products for which Petitioner seeks relief (as well as any exclusions), but also a scope that is administrable and is not susceptible to circumvention. See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3929 (January 23, 2008), unchanged in Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977, (June 16, 2008) and accompanying Issues and Decision Memorandum ("Nails from the PRC").

In its July 7, 2008, letter, Willert, an interested party to the proceeding, requested that the Department exclude certain vinyl-dipped garment hangers manufactured, exported, and/or imported by Willert from the scope of this proceeding, with the purported support of the Petitioner. Petitioner also filed comments on July 7, 2008, but made no explicit reference in support of Willert's company-specific exclusion request.

Here, Willert has requested a clarification and/or modification of the scope of the investigation. Willert's requested modification contains an exclusion that not only is based on a specific physical description of the products for which it seeks exclusion, but also on the further requirement that the excluded products be defined by company-specific product model numbers, marketing nomenclature, and packaging specifications. In a recent proceeding, the Department explicitly denied a scope exclusion request based on products containing specific registered trademarks. See id.

We note that, absent the additional company-specific information within the scope modification request, Willert's product is essentially manufactured using steel wire, which is expressly included within the scope language. We also note that the additional company-specific information injects an element into the scope language that goes beyond the mandate to provide Petitioner relief from unfairly traded products.[9] The effect of the requirement that only Willert's company-specific products are excluded would be to exclude only products of the party controlling those model numbers, marketing nomenclature, and packaging specification while the same products without the specified product model numbers, marketing nomenclature, and packaging specifications would be included, creating a scope that is neither impartial nor reasonable. Moreover, Willert's product model numbers, marketing nomenclature, and packaging specifications may be reproduced by other manufacturers and/or exporters in order to circumvent an antidumping duty order. Furthermore, we are concerned that the company-specific exclusion in the scope modification language may cause significant administrability problems for U.S. Customs and Border Protection ("CBP"), should an antidumping duty order be issued. For example, it may be difficult for CBP to confirm the validity of product model numbers, marketing nomenclature, and packaging specifications that are particular to Willert.

[9] We note that Willert's scope exclusion request was not based solely upon the physical description of the product itself. Rather, the scope exclusion request also included product markings that are specific to Willert.

Although the Department previously included trademark exclusions, which are company-specific, in the scope of the lined paper investigations, the Department noted that those investigations included trademark restrictions from the onset, and as such, the Department did not have to address precisely the same issue – whether to modify the scope of an investigation to exclude trademarked products.[10]

We determine that, based on Department precedent, the company-specific information detailed in Willert's scope exclusion request is an inappropriate basis upon which to modify the scope. Moreover, the Department acknowledges Petitioner's legitimate concerns regarding potential circumvention. Thus, the Department has not granted Willert's request.

Comment 2: Treatment of Drawing Powder

The Shaoxing Metal Companies argue that the Department's dissimilar treatment of Shaoxing Metal Companies' and Shanghai Wells' respective consumption of drawing powder in the Preliminary Determination is inappropriate. The Shaoxing Metal Companies contend that the Department should treat the consumption of drawing powder for both Shaoxing Metal Companies and Shanghai Wells equally either as a direct material or as overhead.[11]

Petitioner argues that the Department should treat drawing powder as a direct material input for both respondents in the final determination. Specifically, Petitioner contends that the Department has, just recently, considered drawing powder to be a direct material input and not an overhead expense. See Nails from the PRC. Accordingly, for the final determination, Petitioner concludes that the Department should value drawing powder for both respondents using the value obtained from Indian import statistics under subheading HTS 3824.9090 for the final determination.

Department's Position:

The Department agrees with Petitioner with respect to the treatment of drawing powder as a factor of production ("FOP") for both mandatory respondents. While Shanghai Wells did not report consumption of drawing powder during the POI, it did report that drawing powder was categorized as an overhead expense in the company's normal course of business. See Shanghai Wells' supplemental questionnaire response dated March 4, 2008, at 20.

However, in accordance with section 773(c)(3)(B) of the Act, we have determined to value Shanghai Wells' consumption of drawing powder as a FOP for the final determination. In the most recent proceeding addressing the treatment of materials purported to be overhead expenses, the Department determined that materials normally classified by a respondent as an overhead

[10] See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China, 70 FR 58374, 58379-58381 (October 6, 2005).

[11] Shanghai Wells did not provide an argument specific to our treatment of drawing powder. Rather, Shanghai Wells only argued the Department's treatment of water and lubricant lard, which are discussed below in Comment 9D.

expense, but consumed for the purpose of manufacturing subject merchandise, are considered FOPs.[12]

Specifically, in Nails from the PRC, the Department determined that the purported overhead consumables were regularly replaced and required in the production process and should be considered FOPs. Here, based on the Department's verification, we noted that drawing powder was a material used specifically for drawing wire rod, which is required for the production of hangers. Moreover, we noted that the materials warehouse contained stores of production materials, including drawing powder, which suggests that the drawing powder is used regularly to draw wire rod into steel wire. See Shanghai Wells Verification Report at 34-35, 37.

As stated above, during the course of the investigation, the Department did not ask Shanghai Wells to report the amount of drawing powder consumed during the POI. However, in order to incorporate Shanghai Wells' consumption of drawing powder into the normal value calculation, we need to quantify Shanghai Wells' drawing powder consumption. Therefore, we have reviewed the record to determine what information is available to calculate Shanghai Wells' consumption of drawing powder.

Section 776(a)(1) of the Act states that where needed information is not available on the record, the Department shall use facts otherwise available. However, we find it is not appropriate to apply AFA to Shanghai Wells' consumption of drawing powder because we did not ask Shanghai Wells to report such information. Instead, we have reviewed other non-adverse information on the record to use as a basis for determining a consumption ratio for drawing powder.[13] Because Gangyuan, one of the companies within the collapsed Shaoxing Metal Companies entity, is a producer of hangers and its production experience closely mirrors that of Shanghai Wells, we are relying on Gangyuan's public version of the drawing powder consumption ratio, as a non-adverse facts available proxy for Shanghai Wells' consumption of drawing powder. See Shanghai Wells Final Analysis Memo. As discussed in the Federal Register notice, under "Use of Adverse Facts Available," we are using neutral facts available because no adverse inference is warranted.

Therefore, as explained above, we determine that, for the final determination, it is appropriate to consider both Shaoxing Metal Companies' and Shanghai Wells' respective consumption of drawing powder as a FOP in the calculation of the normal value. We will continue using the value from Indian import statistics under subheading HTS 3824.9090 as the surrogate value for drawing powder.

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[12] See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 20E; see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2 ("Diamond Sawblades"); Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000), and accompanying Issues and Decision Memorandum ("Silicomanganese from the PRC"), at Miscellaneous Issues, Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China, 60 FR 56045, 56051 (November 6, 1995).

[13] See Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051, 37054 (June 29, 2006) (determining that neutral facts available was warranted for information missing from the record).

Comment 3: Financial Ratios

The Greenburg Traurig Respondents,[14] Shanghai Wells and the Shaoxing Metal Companies state that since the issuance of the Preliminary Determination, they submitted a financial statement from MVM Hangers Private Limited ("MVM"), a hanger producer from India, which they argue now represents the best available information to calculate the surrogate financial ratios.[15] Therefore, they contend the Department should not calculate surrogate financial ratios using the financial statements from Lakshmi Precision Screws Limited ("Lakshmi") who is an Indian producer of fasteners and other automotive parts.

The Greenburg Traurig Respondents argue that there is no evidence that Lakshmi's production process experience closely mirrors that of respondents in this investigation. Moreover, the Greenburg Traurig Respondents contend that, unlike the production of fasteners, the bending of wire into a hanger does not substantially alter the properties of the wire other than in shape. The Greenburg Traurig Respondents assert that the bending of the wire to the shape of the hanger is a relatively insignificant part of the production process and cost structure, compared to the further processing into the wire fasteners. According to the Greenburg Traurig Respondents, fasteners require certain standards and testing that are not needed in the production of subject merchandise. The Greenburg Traurig Respondents argue that if the Department rejects MVM's financial statements as an appropriate surrogate, the Department should calculate the surrogate financial ratios using the financial statements from two wire producers, Rajratan Global Wire Ltd. ("Rajratan Wire") and Kataria Wires Pvt. Ltd. ("Kataria"). As an alternative, the Greenburg Traurig Respondents argue that the Department should average the financial statements data from two fastener producers, Micron Precision Screws Ltd. ("Micron") and Raajratan Fasteners Private Limited ("Raajratan Fasteners"), and nail producer, Nasco Steel Private Limited ("Nasco"), with Rajratan Wire and Raajratan Fasteners.

The Shaoxing Metal Companies also argue that the wire drawing companies are most like hanger companies because the product costs are driven by the cost of steel wire drawn into wire. The Shaoxing Metal Companies assert that the major difference between hangers and wire is that the length of the wire is bent to form hangers in a simple process that takes seconds. The Shaoxing Metal Companies also argue that any materials added to the hangers (paper tubes, etc.) actually lowers costs. The Shaoxing Metal Companies contend that regardless of the mix of companies the Department selects, Lakshmi cannot be included for similar reasons proffered by the Greenburg Traurig Respondents.

The Shaoxing Metal Companies also argue that the fact that Petitioner was unable to locate the financial statements does not render them publicly unavailable. The Shaoxing Metal Companies and Shanghai Wells also contend that Petitioner failed to document any efforts taken to obtain

[14] The Greenburg Traurig Respondents are: United Wire Hanger Corporation, Laidlaw Company, Zhejiang Lucky Cloud Hanger Co., Ltd., Shangyu Baoxiang Metal Product Co., Ltd., Shaoxing Dingli Metal Clotheshorse Co., Shaoxing Meideli Metal Hanger Co., Ltd., Shaoxing Shunji Metal Clotheshorse Co., Ltd., and Shaoxing Zhongbao Metal Manufactured Co. Ltd., Shaoxing Liangbao Metal Manufactured Co. Ltd.

[15] See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 11 (stating that it is the Department's practice to choose surrogate companies that are contemporaneous and most comparable to respondent's experience) ; Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) ("PSF Final"), and accompanying Issues and Decision Memorandum at Comment 12 (where the Department used financial statements specific to the different production processes for each respondent).

the MVM financial statements. Furthermore, the Shaoxing Metal Companies and Shanghai Wells also argue that contrary to Petitioner's arguments, the MVM financial statements are complete, detailed and sufficient for calculating financial ratios.

Petitioner argues that the MVM financial statement is not publicly available because Petitioner could not locate the MVM financial statement on the internet. Petitioner further asserts that its Indian consultant was unable to obtain the MVM financial statement either. Further, according to Petitioner, the MVM financial statement on the record is not complete because: (a) it is missing schedule 20, (b) it contains no page numbers, and (c) there is no description of the company's products. Moreover, Petitioner argues that the financial statement identifies a salary staff of $0.00 and also reveals proprietary company credit card numbers. Additionally, Petitioner argues that MVM is not an integrated hanger producer because it does not purchase wire rod; instead, it appears to use wire as a raw material input. According to Petitioner, there is no evidence that MVM produces wire hangers as plastic is also a major raw material and MVM is listed on an Indian business directory as a plastic products producer. Therefore, Petitioner contends that the Department should use Lakshmi for surrogate financial ratios because it is an integrated producer of a comparable product. Alternatively, Petitioner contends that the Department should average Lakshmi with Usha Martin Ltd. ("Usha Martin") who is also an integrated producer of wire products. Petitioner also provided a chart summarizing the key characteristics of the eight Indian financial statements on the record. Petitioner's Rebuttal Brief dated July 15, 2008, at 10.

Department's Position:

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[16] Moreover, for valuing factory overhead, SG&A, and profit, "the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." 19 CFR 351.408(c)(4); see section 773(c)(4) of the Act.[17]

In the Preliminary Determination, the Department used the financial statements of Lakshmi as the best publicly available information on the record because Lakshmi uses an integrated wire-drawing production process with steel wire rod as the main input, which closely mirrors that of the mandatory respondents, even though it produced comparable rather than identical merchandise. See Preliminary Determination, 73 FR at 15734.

Since the Preliminary Determination, the Department received financial statements from an additional six Indian companies not previously on the record: Rajratan Global, Kataria Wires, Micron Precision Screws, Raajaratna Fasteners and Nasco and MVM. The financial statements of Lakshmi, Godrej & Boyce, and Usha Martin were placed on the record prior to the Preliminary Determination.

[16] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Lined Paper"), and accompanying Issues and Decision Memorandum at Comment 1.

[17] See e.g., Diamond Sawblades, 73 FR 29303, and accompanying Issues and Decision Memorandum at Comment 1.

All nine surrogate financial statements are contemporaneous with the POI; thus, no financial statement is rejected on that basis. Next, we note that no party challenged the Department's preliminary determination that it is more accurate to use financial statements from a surrogate Indian company that uses an integrated process, producing wire products from wire rod rather than a company whose production begins with wire. Absent evidence on the record regarding each proposed surrogate company's level of integration, we examined all the financial statements on the record to determine whether wire rod was listed as a raw material input, which would support a determination that the company produces wire products by drawing its own wire from wire rod. Therefore, the Department determined that only those companies which clearly identify wire rod as a raw material can be considered adequate surrogates to calculate the surrogate financial ratios because any of these more accurately reflect the production experience of the respondents. See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) ("PRC Persulfates") and accompanying Issues and Decision Memorandum at Comment 1. Wire rod is not listed as a raw material in the financial statements of Raajratan Fasteners, Micron, MVM,[18] and Godrej & Boyce Manufacturing Company Ltd.[19] Moreover, no party submitted information on the record to the contrary. Therefore, the Department considered the remaining five companies, which list wire rod as a raw material, for purposes of calculating the surrogate financial statements.

The remaining five companies do not produce identical merchandise. Therefore, we must calculate surrogate financial ratios using producers of comparable merchandise. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp"), and accompanying Issues and Decision Memorandum at Comment 9F.

As noted above by parties, Kataria and Rajratan Global produce various types of wire. Additionally, record evidence shows that Usha Martin produces wire and wire rope. See Petitioner's Comments on Surrogate Country Selection and Surrogate Information, dated January 7, 2008, at 13 and Exhibit 5. However, Lakshmi and Nasco produce various fasteners from steel wire. We find that the financial statements of producers of wire should not be used for purposes of calculating surrogate financial ratios because wire hangers are a downstream product of wire requiring additional manufacturing processes. Using wire producers to calculate the surrogate financial ratios would not capture all the costs beyond wire reported by the respondents in the production of steel wire hangers. Moreover, steel wire hangers sold to the United States during the POI also incurred additional costs beyond wire bending such as paint, paper tubes, paper

[18] Notwithstanding the fact that MVM is not an integrated producer (i.e., produce wire-based products by drawing its own from wire from wire rod), there is no clear evidence in MVM's financial statement that it produces steel wire hangers. Although MVM's financial statement identifies wire as a raw material, it also identifies plastic as another major raw material. Additionally, Petitioner placed information on the record showing that MVM is listed on an Indian business directory of plastic hangers. See Petitioner's May 15, 2008, submission at Exhibit 1.

[19] Although submitted by Shanghai Wells as potential surrogate company, Godrej & Boyce Manufacturing Company Ltd. ("Godrej & Boyce") was rejected along with Usha Martin as the basis for calculating surrogate financial ratios in the Preliminary Determination because neither company use a production process that mirrors the manufacture of hangers as closely as products downstream of wire production, such as screws or fasteners. Moreover, no party rebutted that determination. See Preliminary Determination at 15734.

capes, etc. See Shanghai Wells' Section D response dated December 7, 2007, at D-4, 10-11; Shaoxing Metal Companies' February 25, 2008, supplemental Section D response at 10-11. Therefore, we continue to find that a company which produces fasteners would better reflect the production experience of steel wire hanger producers because fasteners, like hangers, would undergo further processing. See Preliminary Determination at 15734. As such, we will average financial ratios from the financial statements of Lakshmi and Nasco, both of whom are integrated wire fastener producers, to calculate the surrogate financial ratios.

Comment 4: Wire Rod Surrogate Value

Shanghai Wells argues that, for the final determination, the Department should abandon the Indian Joint Plant Committee ("JPC") wire rod surrogate data because the JPC wire rod prices used in the Preliminary Determination appear to represent open market list prices that do not reflect the prices that Indian industrial consumers actually pay for wire rod. Shanghai Wells requests that, instead, the Department should value the wire rod that Shanghai Wells consumed during the POI using: (1) World Trade Atlas ("WTA") Indian import data for wire rod provided in Shanghai Wells' submission of publicly available information ("PAI") dated May 5, 2008, or (2) an average of the unit sales values for wire rod/MS rounds recorded in the annual reports of Bhushan Steel Limited ("Bushan") and Hira Ferro Alloys Limited ("Hira"). Shanghai Wells contends that, in the alternative, if the Department continues to conclude in the final determination that the JPC data are still appropriate for valuing the wire rod, then the Department should average the JPC list price for wire rod with the "Steel Town (Weekly)" open market rates for wire rod for the city of Mandi Gobindgarh and provided to the Department in Exhibit 6 of Shanghai Wells May 5, 2008 PAI Submission.

The Shaoxing Metal Companies argue that the Department should value wire rod using Indian import statistics for HTS 7213.91.90, which includes "Bar/Rod: Hot Rolled, Other Coils<14 mm, Others." The Shaoxing Metal Companies contend that this HTS is the best available information because it is specific to the input in question, contemporaneous, and tax-exclusive. While this HTS is a basket category, the Shaoxing Metal Companies note that the CIT has found that using a basket category is preferable to price quotes that contained inputs not consumed in the production of subject merchandise. See Polyethylene Retail Carrier Bag Comm. v. United States, 29 CIT 1418, and 1443-45 (2005). Accordingly, the Shaoxing Metal Companies conclude that HTS 7213.91.90 is the best information available for valuing wire rod because the Indian price quotes are not actual sales.

In rebuttal, Petitioner argues that the Department should continue to value wire rod using prices from the JPC for the final determination. Petitioner argues that these data are publicly available, specific to the input in question, represent a broad market average, and are tax-exclusive. Petitioner points out that both nails and steel wire garment hangers are downstream products and that the Department's reasoning for finding the JPC data the best available information in Nails from the PRC equally applies to this case. See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 10. According to Petitioner, the JPC data are superior to the WTA data because they are more specific in size to the wire rod used by respondents. Additionally, Petitioner argues that the JPC data are representative of the Indian market because they are an overall market price and are maintained on a regular basis. Moreover, Petitioner contends that the JPC data are not aberrational because there are higher wire rod values, such as from the Usha Martin financial statement, on the record of this proceeding. Therefore, while Shanghai Wells argues that it is the Department's practice to

choose import statistics over other sources, Petitioner notes that the Department's practice is to select the best available information for each input, which, in this instance, is the JPC data.

Additionally, Petitioner contends that the Department should not value the wire rod using an average of wire rod values from the Bhushan and Hira financial statements because these values are based on those companies' respective experiences and are not a broad market average. Additionally, Petitioner argues that the Department should not value wire rod using prices from the Steel Town Weekly because the data only contain prices from Mandi Gobindgarh, which is a single market in India.

Department's Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. The Department's criteria for selecting surrogate value ("SV") information are normally based on the use of PAI, and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See Lined Paper, 71 FR 53079, and accompanying Issues and Decision Memorandum at Comment 3.

Additionally, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Mushrooms"); Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available SV is for each input. See Mushrooms, 71 FR 40477, and accompanying Issues and Decision Memorandum at Comment 1.

We find that, of the options available on the record, the JPC data best satisfies the Department's surrogate value criteria, and will continue to be used to value the steel wire rod input. The JPC data are publicly available, specific to the input in question, represent a broad market average, and are tax-exclusive. With regard to specificity, we note that the JPC data are more specific than WTA data because the JPC data are reported on more specific sizes (e.g. 6mm and 8mm steel wire rod). See Petitioner's Comments on Surrogate Country Selection and Surrogate Information, dated January 7, 2008, at 10-11.

Additionally, we note that the JPC price data have an official nature, in that they represent national-level steel monitoring by a joint government/industry board. See id. In past cases, we have found government publications to be reliable and credible sources of information. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 75303 (December 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1. Additionally, the price data reflect the overall market price and are maintained on a regular basis (i.e., the data represent bi-weekly price information

collected by the JPC from the steel industry).[20] The Department finds that the JPC data are, therefore, representative of the Indian market, in that they contain data points for four different markets in India (Kolkata, Delhi, Mumbai and Chennai) covering all bi-weekly price reports during the POI.

We find that Respondents' argument that the JPC data are "open market list prices" or "opening bids" that do not represent actual prices is not supported on the record. Beyond their statements that the JPC data are "open market list prices," we note that Respondents have not submitted any supporting evidence showing that the JPC data are not actual market prices. Although Respondents argue that the burden is on the Department to base its findings on substantial evidence, in Laminated Woven Sacks, the Department recently stated that the "burden is on the respondents" to establish that a proposed surrogate value "is not an appropriate source." See Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008) ("Laminated Woven Sacks"), and accompanying Issues and Decision Memorandum at Comment 2; Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) ("Retail Carrier Bags"), and accompanying Issues and Decision Memorandum at Comment 6. Accordingly, in keeping with our decisions in Laminated Woven Sacks and Retail Carrier Bags, the burden was on Respondents to show that the JPC data were not actual market prices, despite the indication on the JPC's website that the prices are actual market prices. Respondents have not met this burden. The fact that the JPC data are "market prices" does not mean that they are not "actual prices." Furthermore, we note that the Department has used similar market price data (as opposed to data directly representing transactions) to value material inputs in other cases. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 1; Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 10.

Respondents further allege: (1) that the JPC data are the highest prices on the record which also demonstrates that they are not actual transactions; and (2) the WTA data is as specific to the input in question. While Respondents contend that the prices within the JPC data are higher than all other prices on the record, we find that, as discussed above, the burden is on Respondents to demonstrate that these prices are in fact aberrational. The fact that the JPC data are higher than other prices does not indicate that the JPC data are necessarily distorted and do not represent actual transactions. See Retail Carrier Bags, 73 FR 14216, and accompanying Issues and Decision Memorandum, at Comment 6. Moreover, while Respondents contend that the WTA data are as specific as the JPC data, we note that differences do exist. Specifically, the JPC data offer data for two gauges of wire rod (6mm and 8mm) that very closely match the input used by Respondents.[21] Unlike the JPC data, the narrative description for HTS category 7213.91.90, which they advocate using, is "Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel; Of circular cross-section measuring less than 14mm in diameter; Other." See Shanghai Wells' submission of PAI, dated May 5, 2008, at Exhibit 2. Thus, this HTS category represents a non-specific basket category that includes not only iron products (both bar and rod),

[20] See id., at Exhibit 6; http://www.jpcindiansteel.nic.in/.

[21] See Shaoxing Metal Verification Report, at VE 31; Shanghai Wells Verification Report at VE 27.

but also steel bars and larger gauge wire rod, none of which are used by Shanghai Wells or the Shaoxing Metal Companies to produce the subject merchandise. See Shaoxing Metal Verification Report, at VE 31; Shanghai Wells Verification Report at VE 27. We, therefore, find that specificity is a compelling reason that supports using the JPC data to value the steel wire rod input.

Respondents argue that the Department should not use JPC data because they do not contain quantity information (e.g., how many observations are included in a given price). As an initial matter, and as noted above, the Department has used similar market price data in several other cases. While we agree that the JPC data would be even more revealing if quantity information were included, for the reasons discussed herein, we find that the broad market coverage, product specificity, official governmental sourcing, and contemporaneity of this fully public source, make this the best source of data on the record for valuation purposes.

Lastly, we note that Shanghai Wells submitted POI steel wire rod price data from Steel Town Weekly, and steel wire rod values from Bhushan and Hira financial statements. See Shanghai Wells' submission of PAI, dated May 5, 2008. While the Steel Town Weekly does contain steel wire rod prices that are specific to the input (6mm and 8mm wire rod prices) used by Respondents, we find that because this information contains data points for only one market (Mandi Gobindgarh) this data does not represent as broad a market average as the JPC data. When calculating surrogate values, it is the Department's practice to use country-wide data instead of regional data when the former is available, and the CIT has affirmed this practice. See Wuhan Bee Healthy Co., Ltd. v. United States, 29 CIT 1275, 1277-78 (2005). Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. Furthermore, we find that we should not value wire rod using the steel wire rod values from Bhushan and Hira because these values are based on a single company's experience and are not a broad market average. See Laminated Woven Sacks, 73 FR 35646, and accompanying Issues and Decision Memorandum, at Comment 2. It is the Department's preference to use a publicly available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country. See Honey From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Reviews, 70 FR 9271 (February 25, 2005) and accompanying Issues and Decision Memorandum at Comment 1 (citing to Antidumping Duties; Countervailing Duties, 62 FR 27296, 27366 (May 19, 1997) ("Preamble")). Accordingly, we find that, when presented with various sources of surrogate value information, as we have in this case, the JPC data represent a better source than the wire rod values from the Bhushan and Hira financial statements based on the underlying facts related to these sources. See FMC Corp. v. United States, Slip Op. 03-15 at 17 (CIT 2003).

While the Department commonly uses Indian import statistics to value inputs, we do not have a practice of always choosing this one source over other sources. Rather, we seek to use the best available information for each input. See Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2 ("Lock Washers 2008 Final"). For all of the foregoing reasons, we find that the JPC data represent the

best available information on the record for valuing the steel wire rod input in this antidumping duty investigation, and, therefore, we will use the JPC data to value steel wire rod in the final determination.

Comment 5: Coating Powder and Glue Surrogate Values

The Shaoxing Metal Companies contend that in the Preliminary Determination the Department valued the Shaoxing Metal Companies' and Shanghai Wells' consumption of glue and coating powder using different surrogate values. The Shaoxing Metal Companies argue that there is no record evidence demonstrating that the type of glue and coating powder used by both companies in their production processes varies in composition or use. Accordingly, the Shaoxing Metal Companies argue that the Department should value both the Shaoxing Metal Companies' and Shanghai Wells' consumption of glue and coating powder using the same surrogate values for the final determination.

Petitioner also argues that the Department should value the Shaoxing Metal Companies' and Shanghai Wells' consumption of glue and coating powder using the same surrogate values. Accordingly, Petitioner concludes that the Department should value coating powder using Indian import statistics of HTS 3907.30.10 and value glue using Indian import statistics of HTS 3506.91.10.

Department's Position:

We disagree with the Petitioner and with Shaoxing Metal Companies with respect to the Department's valuation of coating powder and glue. As stated above, when selecting surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI. See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (June 24, 2008) ("Pipe and Tube"), and accompanying Issues and Decision Memorandum at Comment 4. As both values for glue and coating powder are from the same source, WTA data, and are representative of a range of Indian prices within the POI, the only differences between the two values for glue and coating powder is specificity.

In the Preliminary Determination, we valued the Shaoxing Metal Companies' consumption of glue using Indian import statistics of HTS 3506.91.10, which is described as glue "based on Latex, Phenol Phormaldehyde, Urea." See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Alex Villanueva, Program Manager, Subject: Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Determination, (March 18, 2008) ("Preliminary Surrogate Value Memo"). We selected this HTS based on the Shaoxing Metal Companies' description of the composition of the glue that they used during the POI. See Shaoxing Metal Companies' Supplemental Section D Response, (February 25, 2008) at 11 ("SMC Supp. D Response"). Additionally, we valued Shanghai Wells' consumption of glue using Indian Import statistics of HTS 3901.20.00, which is described as glue containing "polyethylene having a specific gravity 0.94/more." See Preliminary Surrogate Value Memo. We also selected this HTS category based on Shanghai Well's identification of this HTS that is most representative of the type of glue they used during the POI. See Shanghai Wells' Supplemental Section D Response, (March 4, 2008) at Exhibit 3. While the Shaoxing Metal Companies' argue that both they and Shanghai Wells consumed

similar types of glue, we find that there is no record evidence to support this. Based on the Shaoxing Metal Companies' statements in the SMC Supp. D Response and Shanghai Wells' identification of the appropriate HTS for valuing their glue consumption, we find that each respondent identified that they used a type of glue that differs in composition to the type used by the other respondent. Therefore, we find that it is appropriate to continue valuing glue for the Shaoxing Metal Companies and Shanghai Wells using Indian import statistics from different HTS categories because each HTS category is most specific to the type of glue consumed by each respondent.

Additionally, in the Preliminary Determination, we valued the Shaoxing Metal Companies' consumption of coating powder using Indian import statistics of HTS 3907.30.10, which is described as "Epoxy resins." See Preliminary Surrogate Value Memo. We selected this HTS category based on the Shaoxing Metal Companies' description of the composition of the coating powder that they used during the POI. See SMC Supp. D Response, at 10. Additionally, we valued Shanghai Wells' consumption of coating powder using Indian Import statistics of HTS 3907.91.20, which is described "Polyester or Contract Resins, Unsaturated." See Preliminary Surrogate Value Memo. We also selected this HTS based on Shanghai Well's identification of this HTS that is most representative of the type of coating powder they used during the POI. See Shanghai Wells' Supplemental Section D Response, at Exhibit 3. While the Shaoxing Metal Companies' argue that both they and Shanghai Wells consumed similar types of coating powder, we find that there is no record evidence to support this. Based on the Shaoxing Metal Companies' statements in the SMC Supp. D Response and Shanghai Wells' identification of the appropriate HTS for valuing their coating powder consumption, we find that each respondent identified that they used a type of coating powder that differs in composition to the type used by the other respondent. Therefore, we find that it is appropriate to continue valuing coating powder for the Shaoxing Metal Companies and Shanghai Wells using Indian import statistics from different HTS categories because each HTS category is most specific to the type of coating powder consumed by each respondent.

Comment 6: Wage Rate

The Shaoxing Metal Companies argue that the Department should revise its wage rate calculation for the final determination because the calculated wage rate incorrectly includes economies that are not comparable to the PRC and excludes economies that are comparable to the PRC. According to the Shaoxing Metal Companies, the Department's data for India and Bangladesh show that the calculated wage rate for the PRC is significantly inflated. The Shaoxing Metal Companies contend that Congress's requirement that the Department should value FOPs using data from comparable economies equally applies to the Department's regression analysis used in calculating wage rates. Additionally, the Shaoxing Metal Companies contend that the Department's regression analysis is unlawful and under litigation at the CIT and has been remanded to the Department. See Dorbest Ltd. v. United States, Slip Op. 06-160 (CIT 2007) ("Dorbest 2007"). Therefore, the Shaoxing Metal Companies conclude that the Department should conform its regression analysis for calculating wage rates to the antidumping duty statute's mandate by limiting the data pool only to "comparable" countries.

In rebuttal, Petitioner argues that the Department should revise the labor rate using the Corrected 2007 Wages for the final determination. See Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008) ("Corrected 2007 Wages"). Additionally, Petitioner states that the Department should continue to find, as in the 12th Garlic

AR Final, that calculating wage rates using data from a larger number of countries "maximizes the accuracy of the regression results." See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of 12th Administrative Review, 73 FR 34251 (June 17, 2008) ("12th Garlic AR Final"), and accompanying Issues and Decision Memorandum at Comment 4; Expected Non-Market Economy Wages: Request for Comments on 2007 Calculation, 73 FR 19812 (April 11, 2008) ("Request for Comments on 2007 Calculation"). Moreover, Petitioner contends that while the Department's regression analysis is currently under litigation, no court has reached a final decision. Therefore, Petitioner argues, the Department should continue to use its current regression analysis to calculate wage rates for the final determination.

Department's Position:

We agree with Petitioner that we should use the revised labor rate using the correct 2007 wage rates. For the final determination, we will continue to use regression-based wage data, but will use US $1.04 as the revised wage for the PRC in this final determination, which continues to be based on the reported experience of several countries, but applies the more recent 2007 calculations, which are based on 2005 wage rate data.[22] We find that a larger number of countries' data maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability among the various countries, and provides predictability and fairness. The economic comparability is established in the regression calculation through the gross national index ("GNI") of the PRC and ensures that the result represents a wage rate for a country economically comparable to the PRC.

We disagree with the Shaoxing Metal Companies' argument that the regression methodology is contrary to the antidumping statute. The Department's long-standing regression methodology is dictated by 19 CFR 351.408(c)(3) and has been recently affirmed by the CIT. See Dorbest Ltd. v. United States, 547 F. Supp. 2d 3121, Slip Op. 2008-24 (CIT Feb. 27, 2008) ("Dorbest 2008"); Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 2008-61, at 6-7 (CIT May 29, 2008). The Shaoxing Metal Companies cited to Dorbest 2007, but failed to acknowledge Dorbest 2008, where the CIT affirmed the Department's methodology *in toto*.

The Department considered other methodologies in the remand redetermination in Dorbest 2008, including the use of India alone. Specifically, the Department considered choosing a single wage rate from an economically comparable market economy, averaging the wage rates of economically comparable market economies, and running the regression only on economically comparable countries. In rejecting these alternative methodologies, the Department concluded that none of these alternatives reduces the potential for distortion or increases either fairness or predictability. See Dorbest 2008, 547 F. Supp. 2d 3121, Slip Op. 2008-24 at 11. Accordingly, we find that, as upheld by the CIT in Dorbest 2008, the Department's regression methodology is superior to a single country's wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in the data, ties the estimated wage rate directly to each NME's GNI, and provides predictable results that are as accurate as possible. We find that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the data in the regression includes all earnings data that best

[22] See http://ia.ita.doc.gov/wages/05wages/05wages-051608.html; see also Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008).

reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.[23] Because reliable wage rate data is available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME's level of economic development via its GNI. Using the Department's regression methodology, the value for labor in a particular country remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department's calculations.

In Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720-61721 (October 19, 2006), the Department addressed the Shaoxing Metal Companies' primary argument and found that restricting the basket of countries to include only countries that are economically comparable to each NME country would undermine the consistency and predictability of the Department's regression analysis. The smaller the number of countries included in the basket, the more likely the data from the surrogate would individually affect the wage rate applied. A basket of "economically comparable" countries could be extremely small. For example, there are only four countries with GNI less than US$1,000 in the Department's 2005 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would, therefore, be highly dependent on each and every data point. This would in many ways defeat the reason the Department uses International Labor Organization ("ILO") data to determine wage rates. It is also worth noting this relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data.[24] This inevitable variability in the underlying ILO data is especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms.

While the Shaoxing Metal Companies point specifically to India as an example of wages "overstated" by the regression calculation, there are a significant number of predicted wage rates

[23] The Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME's hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

[24] For example, in the data relied upon for the Department's 2005 calculation, observed wage rates did not increase in lockstep with increases in GNI in the four countries with GNI less than US$1,000: Nicaragua, with a GNI of US$950, had reported a wage rate of US$0.884 per hour, Mongolia, with a GNI of US$720, had reported a wage rate of US$0.434 per hour, India, with a GNI of $730, had reported a wage rate of US$0.213 per hour, and Madagascar, with a GNI of US$290, had a reported wage rate of US$0.200. See http://ia.ita.doc.gov/wages/05wages/05wages-051608.html.

that also are above the regression line, i.e., economies for which the model would "understate" wage rates; in all, 23 of the 61 countries included in the model lie above the regression line. India's wage rate is the second lowest reported wage rate in the Department's data set, despite not being the second lowest GNI per capita. Still, the Department treats India's wage rate not as an anomaly, but as another piece of data that informs the regression line. However, given that India's wage rate is so much lower than that of other countries in relation to its GNI, any calculation that relies on data from other countries would overstate India's actual reported wage. Because India's wage rate is so low relative to its GNI, the regression, unsurprisingly, also "overstates" India's wage rate, and can lead to an appearance of distortion, even where there is none, such that the calculated wage rate falls within an acceptable margin of error.

Therefore, we find that the Department's wage rate methodology is neither arbitrary, capricious or manifestly contrary to the statute and the Department's determination is entitled to controlling weight. In Chevron, the court found that where the antidumping statute does not require a specific methodology, the Department's interpretations "are given controlling weight, unless they are arbitrary, capricious, or manifestly contrary to the statute." See Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 844 (1984). Moreover, the CIT held in Luoyang Bearing that the "statute does not direct Commerce to use a specific method in its valuation of labor." See Luoyang Bearing Corp. v. United States, 347 F. Supp. 2d 1326, 1346 (CIT 2004). The Department considered several alternative methodologies in Dorbest 2008. As the court explained, the Department "reasonably rejected . . . all the alternatives proposed to its chosen approach. Accordingly, the court will affirm its choice." See Dorbest 2008, 547 F. Supp. 2d, Slip Op. 2008-24 at 19.

Lastly, we note that the Department provided the full explanation for the countries it included and excluded in its 2007 wage rate calculation. See Request for Comments on 2007 Calculation, 73 FR 19812; see also 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 26363 (May 8, 2008) ("2007 Wage Rates"). All parties had ample opportunity to comment on the calculated wage rates to be applied to the final determination in this investigation, as requested in the Request for Comments on 2007 Calculation. The Department published the 2007 Wage Rates, notifying parties of the finalized NME wage rates and informing parties that those wage rates would be "in effect for all antidumping proceedings for which the Department's final decision is due after the publication of this notice."[25] Accordingly, we find that all parties were notified of the Department's intention to apply the revised wage rates for this final determination and, thus, we will be using the revised wage rates for the final determination.

Comment 7: Steel Scrap Offset Surrogate Value

Petitioner argues that because the calculated steel scrap surrogate value is higher than the wire rod surrogate value, the steel scrap value is aberrational and is not accurately reflected as a residue of the primary input. Accordingly, Petitioner concludes that the Department should value steel scrap using a surrogate value that is lower than the value of steel wire rod.

In rebuttal, Shanghai Wells argues that the Department should continue to use the steel scrap surrogate value used in the Preliminary Determination. Shanghai Wells claims that Petitioner

[25] On May 14, 2008, the Department published Corrected 2007 Wages, 73 FR 27795, correcting a ministerial error in the wage rate calculation.

did not provide any surrogate data to value steel scrap to rebut the scrap surrogate value on the record. Shanghai Wells argues that because Petitioner did not provide any alternative steel scrap surrogate values, the Department should continue to value steel scrap using the same surrogate value from the Preliminary Determination.

Department's Position:

The Department does not agree with Shanghai Wells with respect to the steel scrap offset surrogate value. In the Preliminary Determination, the Department valued steel scrap at 32.62 Rs/kg using WTA Indian import data. See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Alex Villanueva, Program Manager, Subject: Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Determination, (March 18, 2008) ("Surrogate Value Memorandum"). While this surrogate value represents the best data available on the record of the investigation, we note that the calculated surrogate value for steel scrap, 32.62 Rs/kg, is almost ten Rupees and over 40 percent greater than the calculated surrogate value for the initial product, steel wire rod, 23.20 Rs/kg. The Department has stated in a similar previous case that "it is clear that our steel scrap value selection produced an unreasonable result – a value for steel wire rod scrap (0.8390 USD/kg) that exceeded the price for steel wire rod (0.3119 USD/kg) – one that cannot be explained by any notes or data." See Final Determination Pursuant To The Remand Order From The U.S. Court Of International Trade In Paslode Division of Illinois Tool Works, Inc. v. United States, Ct. No. 97-12-02161 (Jan. 15, 1999) ("Collated Roofing Nail Remand"). We find that, in this case, the facts match this situation closely in that the only suggested HTS category for the valuation of steel scrap (7204.41.00) has a value greater than the value the Department determined in Comment 4 above. Accordingly, reliance on this value will produce an unreasonable result, which we will avoid in keeping with our recent decision for this HTS category in Nails from the PRC. See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 10. Consequently, we have selected a new value for valuing the Respondents' reported steel scrap offset for the final determination.

Unlike in Nails from the PRC, however, we note that in rejecting the steel scrap value calculated using WTA import data from HTS 7204.41.00, there is no other specific PAI value for steel scrap on the record. See id. Section 776(a) of the Act requires use of facts otherwise available in reaching a determination when necessary information is not available on the record. In the Collated Roofing Nail Remand, when there was no other specific non-aberrational PAI value for steel scrap on the record, the Department valued steel scrap using the surrogate value for wire rod. See Collated Roofing Nail Remand, at 3. Following our practice in the Collated Roofing Nail Remand, as facts available, we have selected the calculated steel wire rod surrogate from the JPC data to value steel scrap because it satisfies the other surrogate value selection criteria. See Carbon Steel Butt-Weld Pipe Fittings. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058, 21062-21063 (May 18, 1992).

Comment 8: Shaoxing Metal Companies

A. Total Adverse Facts Available ("AFA") for the Shaoxing Metal Companies

Petitioner argues that the Department should apply total AFA to the Shaoxing Metal Companies for the final determination because of significant discrepancies regarding the Shaoxing Metal

Companies' Q&V of sales, water, brown paper, white paper, steel scrap sales, and sales trace A, found by the Department at verification. According to Petitioner, each of the three producers that consist of the Shaoxing Metal Companies was unable to reconcile their reported Q&V of sales of subject merchandise to their accounting records at verification. Petitioner argues that the fact that two of the producers accounted for the vast majority of the Shaoxing Metal Companies' sales and their failure to successfully verify Q&V is sufficient grounds for rejecting the Shaoxing Metal Companies' submitted data. See Petitioner's Case Brief dated July 10, 2008, at 2-3. Additionally, Petitioner argues that the Department found at verification that one of the Shaoxing Metal Companies, Tongzhou, did not receive payment from the customer for one of the selected sales traces. Petitioner contends this sales trace represented a significant majority of the Shaoxing Metal Companies' verified sales and, thus, the vast majority of the Shaoxing Metal Companies sales-specific transactions were found to not be paid. Moreover, Petitioner states that two of the Shaoxing Metal Companies failed to provide complete FOP packages that would allow the Department to verify white paper, and all of the Shaoxing Metal Companies failed to provide complete FOP packages that would allow the Department to verify brown paper. Furthermore, Petitioner notes that the Department found at verification that the Shaoxing Metal Companies did not base their reported water FOP on actual consumption and only reported water consumption for part of the POI. Finally, Petitioner argues that the Department found at verification that the Shaoxing Metal Companies failed to provide complete materials that would allow the Department to verify its reported steel scrap sales. Based on these significant discrepancies, Petitioner concludes that the Department should reject the Shaoxing Metal Companies' submitted data as inaccurate and apply total AFA to the Shaoxing Metal Companies.

The Shaoxing Metal Companies argue that the Department should not apply total AFA to the Shaoxing Metal Companies because of discrepancies found at verification. The Shaoxing Metal Companies state that the Court of Appeals for the Federal Circuit has found that verification "is a spot check and is not intended to be an exhaustive examination of the respondent's business." See Micron Tech., Inc. vs. United States, 117 F.3d 1386, 1396 (Fed. Cir. 1997) ("Micron"). Because the court found in Micron that verification is not intended to be a complete audit of a respondent, the Shaoxing Metal Companies contend that the verification report, including minor discrepancies, should be interpreted in the context of the "monumental" amount of information requested and verified by the Department.

The Shaoxing Metal Companies argue that the verification exhibits show that over 50 inputs were verified with only minor discrepancies and based on the Department's standard of spot checking this establishes the reliability of the Shaoxing Metal Companies' reported FOPs. Additionally, the Shaoxing Metal Companies contend that while the Department did note small discrepancies in the Shaoxing Metal Companies' reported Q&V at verification, there is no record evidence demonstrating these purported discrepancies. In fact, the Shaoxing Metal Companies argue that the respondents' staff demonstrated the errors in the Department's calculation of the Shaoxing Metal Companies' Q&V and provided sales listings to the Department that explained the additional discrepancies. However, the Shaoxing Metal Companies note that while the Department declined this additional reconciliation information as new factual information, this information is not new because it is required in the verification outline and has been accepted in prior verifications by the Department. See Shaoxing Metal Companies' Case Brief dated July 10, 2008, at 17-18. Moreover, the Shaoxing Metal Companies contend that while certain verification packages were not translated, the Department did not allot the Shaoxing Metal Companies a reasonable amount of time to complete each task commensurate with the task required by the Department. Therefore, the Shaoxing Metal Companies conclude that the

Department should not apply total AFA to the Shaoxing Metal Companies because the Shaoxing Metal Companies' reported sales and FOPs were carefully prepared and exhaustively verified.

In rebuttal, Petitioner argues that the Shaoxing Metal Companies were provided advance notice of the verification agenda, the verification report does not indicate any unreasonable demands made by the Department, and the discrepancies discovered at verification are not minor. Accordingly, Petitioner concludes that the Department should apply total AFA to the Shaoxing Metal Companies for these discrepancies because other respondents, involving multiple companies, have been successfully verified. See Petitioner's Rebuttal Brief, (July 15, 2008) at 28.

In rebuttal, the Shaoxing Metal Companies argue that the Department should not apply total AFA for the final determination because the Department did not find significant discrepancies and the overall verification of the four Shaoxing Metal Companies was only one week. Regarding value discrepancies in the Q&V, the Shaoxing Metal Companies contend that the discrepancies in the value are due to the fact that the value in the submitted responses are in U.S. dollars and there is a rounding issue in converting from the RMB value recorded in the accounting records. Regarding quantity discrepancies in the Q&V, the Shaoxing Metal Companies state that they reported their cost accounting system in pieces and reported their factors on a piece basis, which is why they also reported their U.S. sales on a piece basis. They argue that this methodology was consistent with their accounting records because reporting on a carton basis could result in varying number of individual hangers. However, the Shaoxing Metal Companies note that their submitted sales quantity, which is in pieces, is not reported in their sales ledgers, which record in cartons. Therefore, the Shaoxing Metal Companies contend that it is not possible to tie the reported quantity of sales for each Shaoxing Metal Company to the sales ledger. The Shaoxing Metal Companies note that at verification the Department was able to tie the reported quantity of sales for Gangyuan to the summary sheet that supported the total quantity in pieces. The Shaoxing Metal Companies assert that any alleged discrepancy regarding their reported quantity of sales is not of probative value because these discrepancies relate to carton quantities and not the quantity of pieces reported in their sales databases. Furthermore, the Shaoxing Metal Companies conclude that any other alleged discrepancies regarding their reported Q&V are unsupported because they are documented by the administrative record and they were not given a chance at verification to explain or resolve these discrepancies.

Additionally, regarding the sale where one of the Shaoxing Metal Companies, Tongzhou, did not receive payment, the Shaoxing Metal Companies state that they did receive payment. They argue that, Andrew, one of the Shaoxing Metal Companies, received payment for this sale because the customer paid Andrew, which received the order from the customer, instead of Tongzhou who fulfilled the order. Accordingly, the Shaoxing Metal Companies contend that their sales database is accurate because as a single entity they have reported all sales that were produced and paid. Moreover, regarding white paper, brown paper, and steel scrap sales, the Shaoxing Metal Companies contend that relatively few verification items were not verified for each of the Shaoxing Metal Companies, except for brown paper. The Shaoxing Metal Companies argue, however, that because the Department verified 50 inputs for four companies within one week whereas the other respondent, Shanghai Wells, only had to verify nine inputs for one producer in one week, the Department should consider all of their inputs to be verified. Furthermore, regarding Petitioner's contention that they did not accurately report water consumption, the Shaoxing Metal Companies contend that since they did not have water meters, they chose to report all water consumption. According to the Shaoxing Metal Companies, their

water consumption based on the invoice date is reasonable because they have in fact overstated their water consumption since the Department noted at verification that their June 2007 water consumption is lower than the amount booked in January 2007. The Shaoxing Metal Companies contend that, because they worked diligently throughout the verification and the Department fully verified the accuracy of their responses, the application of total AFA is not appropriate.

Department's Position:

We disagree with Petitioner as we find that the application of total AFA for the Shaoxing Metal Companies is not appropriate because of discrepancies regarding the Shaoxing Metal Companies' Q&V of sales, water, brown paper, white paper, steel scrap sales, and sales trace A, found by the Department at verification. Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also SAA at 870, reprinted in 1994 U.S.C.C.A.N. at 4199. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See 776(b) of the Act.

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information. See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003). Further, section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998) ("Semiconductors").

In this case, we find that the application of total AFA for the Shaoxing Metal Companies is not appropriate. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act because the Shaoxing Metal Companies: (A) submitted the requested information by the submitted deadlines; (B) with the exception of the verification packages of white paper, brown paper, and steel scrap sales, provided most information in a timely manner and in the form or manner requested; (C) did not significantly impede this proceeding under the antidumping statute; and (D) reported U.S. sales and the majority of their FOPs were confirmed by the Department through verification.

We note that, while the Shaoxing Metal Companies experienced a few difficulties during the verification, they were able to demonstrate that their books and records reconciled to their reported FOP data; the Shaoxing Metal Companies were able to demonstrate that its source sales documents reconciled to the reported U.S. sales; and the Department was able to complete a verification of the majority of normal value. Although Petitioner contends there are serious discrepancies in the Shaoxing Metal Companies' reported U.S. sales, we find that the discrepancies are not found in the Shaoxing Metal Companies' reported U.S. sales but are found in the inconsistent nature of the Shaoxing Metal Companies' accounting records. However, we find that the inconsistencies in Gangyuan's and Andrew's accounting records do not impugn the accuracy and reliability of Gangyuan's and Andrew's reported Q&V because we were able to verify these figures to the key source documents for sales, such as invoices and inventory out-slips. See Shaoxing Metal Verification Report, at 18-9; Department's Position at Comment 8C for further discussion.

Additionally, with respect to Petitioner's argument regarding non-payment of sales trace A, we find that the Shaoxing Metal Companies' provided payment documentation for this sale and thus receipt of payment for sales trace A was fully verified. See Department's Position at Comment 8C for further discussion. Moreover, we find, with a few minor exceptions (e.g., water reported based on booking date, and unverified white paper, brown paper, and steel scrap ratios), that we were able to reconcile the rest of the Shaoxing Metal Companies' FOPs to their accounting records. See Department's Position at Comments 8D and 8E for further discussion. Specifically, the Department was able to: (1) tie each company's purchases of the input to the VAT invoice to the general ledger; (2) tie the VAT invoice to the sub-ledger; (3) tie the purchases and consumption of the input from the VAT invoices and inventory accounts to the general ledger; and (4) tie the wages of each company's labor summary sheets to the general ledger. Therefore, because most of the Shaoxing Metal Companies' FOPs were verified and the Shaoxing Metal Companies' reported Q&V of U.S. sales were verified, we find that the Shaoxing Metal Companies provided useable FOPs and U.S. sales data, in a timely manner, which the Department was able to verify. See Shaoxing Metal Verification Report. Therefore, the Department finds that, pursuant to section 776 of the Act, there is no basis for applying total AFA to the Shaoxing Metal Companies for the final determination. Furthermore, because the data submitted by the Shaoxing Metal Companies comply with the standards outlined in section 782(e), we have determined that there is sufficient reliable information to accurately calculate a dumping margin for the final determination and will not apply total AFA for the Shaoxing Metal Companies for the final determination.

B. Total AFA for Quantity and Value ("Q&V") of U.S. Sales

Petitioner argues that the Department should apply total AFA to the Shaoxing Metal Companies for the final determination because each of the three producers that consist of the Shaoxing Metal Companies were unable to reconcile their reported Q&V of sales of subject merchandise to their accounting records at verification. Petitioner argues that the fact that two of the producers accounted for the vast majority of the Shaoxing Metal Companies' sales and their failure to successfully verify Q&V is sufficient grounds for rejecting the Shaoxing Metal Companies' submitted data. See Petitioner's Case Brief dated July 10, 2008, at 2-3. If the Department determines that the application of total AFA to the Shaoxing Metal Companies is not appropriate, Petitioner argues that the Department should apply partial AFA to Shaoxing Metal Companies for the final determination because of the various discrepancies. Petitioner argues that the Department should apply partial AFA to the Shaoxing Metal Companies' sales using the difference in the quantities that the Shaoxing Metal Companies were unable to reconcile to their accounting records at verification.

The Shaoxing Metal Companies argue that the Department should not apply AFA because of minor discrepancies found at verification. The Shaoxing Metal Companies argue that while the Department did note small discrepancies in the reported Q&V at verification, there is no record evidence demonstrating these purported discrepancies. In fact, the Shaoxing Metal Companies argue that the respondents' staff demonstrated the errors in the Department's calculation of the Shaoxing Metal Companies' Q&V and provided sales listings to the Department that explained the additional discrepancies.

In rebuttal, Petitioner argues that the Shaoxing Metal Companies' argument that the Department should make allowances for deficiencies and errors discovered at verification because it was disadvantaged by the Department's verification schedule is without merit. Accordingly, Petitioner concludes that the Department should apply partial AFA to the Shaoxing Metal Companies for these major discrepancies.

Department's Position:

We disagree with Petitioner that that the application of total AFA is appropriate to the Shaoxing Metal Companies because of discrepancies found with respect to the Shaoxing Metal Companies' reported Q&V of U.S. sales. For further discussion, please see the Department's Position at Comment 8A. Additionally, we disagree with Petitioner that the application of partial AFA is appropriate to the Shaoxing Metal Companies' reported Q&V of U.S. sales.

The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 8A. The Department finds that the application of facts otherwise available is not warranted under section 776(a) of the Act. While we recognize that, in the Shaoxing Metal Verification Report, we noted that there were differences between the reported Q&V for Andrew and Gangyuan, and what was reported in the sales sub-ledger and export sales listings, we find that we were able to verify Gangyuan's and Andrew's reported U.S. sales. See Shaoxing Metal Verification Report, at 18-9. Specifically, we were able to: (1) tie Gangyuan's reported Q&V in its Section C database to sales source documents, such as sales invoices and inventory out-slips; (2) tie Andrew's reported Q&V in its Section C database to sales source documents, such as

sales invoices and inventory out-slips; and (3) tie Tongzhou's reported Q&V in its Section C database to sales source documents and accounting records. See id.

Although Petitioner contends there are serious discrepancies in the Shaoxing Metal Companies' reported U.S. sales, we find that the discrepancies are not found in the Shaoxing Metal Companies' reported U.S. sales but are found in the inconsistent nature of the Shaoxing Metal Companies' accounting records. At verification, we found that when we were attempting to take Gangyuan's and Andrew's reported U.S. sales from the source documents through the rest of their accounting records that there was inconsistent transferring of the Q&V information. We found that at verification that this is due to the fact that there are "human errors in the transfer of data" from the source documents to the rest of their accounting records, such as export sales listings and the sales sub-ledger. See id. However, we find that the inconsistencies in Gangyuan's and Andrew's accounting records do not impugn the accuracy and reliability of Gangyuan's and Andrew's reported Q&V because we were able to verify these figures to the key source documents for sales, such as invoices and inventory out-slips. Additionally, we were able to perform numerous sales completeness tests for Gangyuan and Andrew and tie each sale from the invoice to their accounting records. See Shaoxing Metal Verification Report, at 19 and VE 29. Moreover, as discussed above, we find that the third company, Tongzhou's, reported Q&V is accurate and reliable because we were able to verify Tongzhou's reported Q&V to its accounting records. Therefore, despite Petitioner's arguments, we do not find that the Shaoxing Metal Companies' reported U.S. sales were unverifiable. And thus, the use of facts available is not appropriate, pursuant to section 776(a) of the Act. Accordingly, we find that the use of this sales data is not so incomplete as to be unusable, and can be used without undue difficulty. Additionally, we find that, because we were able to verify the Shaoxing Metal Companies' reported Q&V of U.S. sales, the Shaoxing Metal Companies cooperated to the best of their ability, pursuant to section 776(b) of the Act. Therefore, we do not find that the application of partial AFA with respect to the reported Q&V of U.S. sales is appropriate, and will use this data in the calculation of a margin for the Shaoxing Metal Companies for the final determination.

C. Partial AFA for Sales Trace A

In the event that the Department does not apply total AFA, Petitioner argues that the Department should apply partial AFA to Shaoxing Metal Companies for the final determination because of non-payment for sales trace A. Petitioner contends that the Department should apply partial AFA to the Shaoxing Metal Companies' sales based on the significant share of sales-specific transactions examined at verification that did not have payment documentation.

The Shaoxing Metal Companies argue that the Department should not apply AFA to the Shaoxing Metal Companies because of this minor discrepancy found at verification. Regarding the sale where Tongzhou did not receive payment, the Shaoxing Metal Companies state that the Shaoxing Metal Companies did, in fact, receive payment. They argue that, Andrew, one of the Shaoxing Metal Companies, received payment for this sale because the customer paid Andrew, which received the order from the customer, instead of Tongzhou who fulfilled the order. Accordingly, the Shaoxing Metal Companies contend that their sales database is accurate because as a single entity they have reported all sales that were produced and paid.

In rebuttal, Petitioner argues that the Shaoxing Metal Companies' argument that the Department should make allowances for deficiencies and errors discovered at verification because it was disadvantaged by the Department's verification schedule is without merit. Accordingly,

Petitioner concludes that the Department should apply partial AFA to the Shaoxing Metal Companies for non-payment of sales trace A.

Department's Position:

We disagree with Petitioner that the application of partial AFA is appropriate to the Shaoxing Metal Companies because of the payment issue regarding sales trace A. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 8A. The Department finds that the application of facts otherwise available is not warranted under section 776(a) of the Act. In the Preliminary Determination, the Department collapsed the four companies, Gangyuan, Andrew, Tongzhou, and Tongzhou, into a single entity known as the Shaoxing Metal Companies, pursuant to 19 CFR 351.401(f). See Memorandum to Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Julia Hancock, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Steel Wire Garment Hangers from the People's Republic of China: Affiliations Memo of Shaoxing Gangyuan and its Affiliates, (March 18, 2008) ("Shaoxing Metal Companies Affiliation Memo"). We note that since the Preliminary Determination, no interested party has submitted arguments or evidence contesting our finding the Shaoxing Metal Companies to be a single entity. Therefore, because there is no record evidence demonstrating that the Shaoxing Metal Companies should not be treated as a single entity, we find that it was appropriate to continue to treat the Shaoxing Metal Companies as a single entity, pursuant to 19 CFR 351.401(f). Accordingly, we will continue to do so for the final determination of this proceeding.

Because we have continued to treat the Shaoxing Metal Companies as single entity for the final determination, we find that the Shaoxing Metal Companies did receive payment for sales trace A. Petitioner is correct that we found at verification that the company, Tongzhou, which produced and made this sale did not receive payment for it. We do not agree, however, that this requires finding that the Shaoxing Metal Companies did not receive payment for this sale. See the Shaoxing Metal Verification Report at 21. In fact, the Shaoxing Metal Companies, as requested by the Department at verification, explained that another Shaoxing Metals company, Andrew, who received the order from the customer, received payment for sales trace A. Additionally, the Department was provided with payment documentation at verification that confirms that Andrew did receive payment for sales trace A. Accordingly, we find that the Shaoxing Metal Companies, as a single entity, did receive payment for sales trace A.

The fact that the company that produced and made the sale did not receive payment does not demonstrate that the Shaoxing Metal Companies did not receive payment. We find that the fact that Andrew received payment for sales trace A but did not make the sale, is evidence of the potential for the possible manipulation of prices between the Shaoxing Metal Companies and is part of the reason we collapsed the Shaoxing Metal Companies as a single entity for the final determination. See 19 CFR 351.401(f)(2). Accordingly, because the Shaoxing Metal Companies' receipt of payment for sales trace A was verified and confirms our finding the Shaoxing Metal Companies to be a single entity based on the potential for price manipulation among these entities, we find that the Shaoxing Metal Companies cooperated to the best of their ability, pursuant to section 776(a) of the Act in reporting information related to sales trace A. Therefore, we do not find that the application of partial AFA with respect to sales trace A is

appropriate, and will include this data in the calculation of a margin for the Shaoxing Metal Companies for the final determination.

D. Partial AFA for Water

In the event that the Department does not apply total AFA, Petitioner argues that the Department should apply partial AFA to Shaoxing Metal Companies' reported water consumption for the final determination.

The Shaoxing Metal Companies argue that the Department should not apply AFA for the final determination because the Department did not find a significant discrepancy regarding water at verification. Specifically, the Shaoxing Metal Companies contend that since they did not have water meters, they chose to report all water consumption. According to the Shaoxing Metal Companies, their water consumption based on the invoice date is reasonable because they have in fact overstated their water consumption since the Department noted at verification that their June 2007 water consumption is lower than the amount booked in January 2007. The Shaoxing Metal Companies contend that, because they worked diligently throughout the verification and the Department fully verified the accuracy of their responses, the application of AFA is not appropriate.

In rebuttal, Petitioner contends that the Shaoxing Metal Companies' argument that the Department should make allowances for deficiencies and errors discovered at verification because it was disadvantaged by the Department's verification schedule is without merit. Accordingly, Petitioner concludes that the Department should apply partial AFA to the Shaoxing Metal Companies for water.

Department's Position:

We disagree with Petitioner that the application of partial AFA is appropriate to the Shaoxing Metal Companies' because of not reporting their actual consumption of water. Instead, we find that the application of neutral facts available is appropriate for the Shaoxing Metal Companies' not reporting their actual water consumption.

The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 8A. The Department finds that the application of facts otherwise available is warranted under section 776(a) of the Act. Initially, we note that the NME Questionnaire requests that the respondent report the amount of water "actually used." See NME Questionnaire, at 43. However, in its questionnaire responses, the Shaoxing Metal Companies reported that it based its water consumption "on the invoices received." See Shaoxing Metal Companies' Supp. D Response, (February 25, 2008) at 17. In addition, the Shaoxing Metal Companies reported that "because it could not distinguish between the production use and non-production use, they reported all water consumption in the Section D databases." See id., at 16. At verification, the Department observed that the Shaoxing Metal Companies reported their water consumption based on the date they booked the water invoice and not on actual consumption of water. We noted at verification that the water invoices were received for the previous month's consumption and because of this the Shaoxing Metal Companies' reported water consumption included consumption of water prior to the POI. See Shaoxing Metal Verification Report, at 40-42. Moreover, we found at verification that the Shaoxing Metal

Companies' reported consumption of water did not include their consumption of water for the end of the POI, but that they had the invoices for this consumption in their possession. See id. Therefore, while the Shaoxing Metal Companies declined to report their actual consumption of water for the POI, arguing that reporting water based on the booking data is a reasonable methodology, we find that the Shaoxing Metal Companies had in their possession the documents to report water based on actual consumption.

Regarding the Shaoxing Metal Companies' argument that reporting water based on the booking date is as reasonable a methodology as reporting based on actual consumption, the Department disagrees. Specifically, it is the Department's practice to calculate "normal value as accurately as possible" using "actual consumption quantities." See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China, 67 FR 71137 (November 29, 2002), and accompanying Issues and Decision Memorandum at Comment 6. Accordingly, the Department finds that, as directed by the NME Questionnaire, the Shaoxing Metal Companies should have reported their consumption of water based on "actual consumption quantities" and not based on the booking date. Accordingly, because the Shaoxing Metal Companies failed to provide their water consumption in the form and manner requested by the Department, pursuant to section 776(a)(2)(B), the Department has applied partial facts available to the Shaoxing Metal Companies' water consumption.

However, we disagree with Petitioner that an adverse inference is warranted for the Shaoxing Metal Companies' water consumption. Specifically, we find that the Shaoxing Metal Companies' have not failed to cooperate to the best of their ability because they responded to all our requests for information, pursuant to section 776(b) of the Act. Accordingly, as partial facts available, because the Shaoxing Metal Companies did provide water invoices that reflect their actual water consumption for part of the POI, we have not declined to use this information for calculating their actual water consumption for the POI, pursuant to section 782(e) of the Act. Therefore, as partial facts available, we have used these water invoices to calculate their average actual water consumption for the POI. See Shaoxing Metal Companies' Final Analysis Memo.

E. Partial AFA for White Paper, Brown Paper, and Steel Scrap Sales

In the event that the Department does not apply total AFA, Petitioner argues that the Department found at verification that the Shaoxing Metal Companies failed to provide complete materials that would allow the Department to verify its reported steel scrap sales. Based on these significant discrepancies, Petitioner concludes that the Department should reject the Shaoxing Metal Companies' submitted data as inaccurate and apply partial AFA to the Shaoxing Metal Companies' reported white paper and brown paper inputs by using Petitioner's tube-making cost for each strut hanger. See Petitioner's Response to the Department's Supplemental Questionnaire, (August 27, 2007). Finally, Petitioner claims that the Department should apply partial AFA to the Shaoxing Metal Companies' reported steel scrap sales by not granting the Shaoxing Metal Companies a by-product offset for the final determination.

In rebuttal, the Shaoxing Metal Companies argue that the Department should not apply AFA for the final determination because, while certain verification packages were not translated, the Department did not allot the Shaoxing Metal Companies a reasonable amount of time to complete each task commensurate with the task required by the Department. The Shaoxing Metal Companies argue, however, that because the Department verified 50 inputs for four companies within one week whereas the other respondent, Shanghai Wells, only had to verify

nine inputs for one producer in one week, the Department should consider all of their inputs to be verified. Therefore, the Shaoxing Metal Companies conclude that the Department should not apply l AFA to the Shaoxing Metal Companies because the Shaoxing Metal Companies' reported sales and FOPs were carefully prepared and exhaustively verified.

In rebuttal, Petitioner contends that the Shaoxing Metal Companies' argument that the Department should make allowances for deficiencies and errors discovered at verification because it was disadvantaged by the Department's verification schedule is without merit. Accordingly, Petitioner concludes that the Department should apply partial AFA to the Shaoxing Metal Companies for these major discrepancies.

Department's Position:

We agree with Petitioner that the application of partial AFA is appropriate to the Shaoxing Metal Companies' white paper inputs, brown paper inputs, and steel scrap sales. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met. See section 776(a) of the Act, as discussed in Comment 8A. The Department finds that the application of facts otherwise available is warranted under section 776(a) of the Act. Between December 2007 and February 2008, we received the Shaoxing Metal Companies' Section D questionnaire responses, which included their submitted FOPs for white paper, brown paper, and steel scrap. Based on the information on the record of this proceeding, the Department relied on all of the FOP information submitted by the Shaoxing Metal Companies in the Preliminary Determination.

The Department conducted its verification of the Shaoxing Metal Companies between June 2, and June 6, 2008. At verification, the Department discovered that the Shaoxing Metal Companies were not prepared to conduct verification of the white paper inputs, brown paper inputs, and steel scrap sales, and this unpreparedness impeded the Department's ability to conduct a thorough verification of the Shaoxing Metal Companies. Also, the Shaoxing Metal Companies did not cooperate to the best of their ability with the Department's request for information because source documents needed for verification were not prepared and translated for review of these inputs during verification, as requested in the verification outline. Consequently, the Shaoxing Metal Companies failed to substantiate the white paper inputs reported for Gangyuan and Andrew, the brown paper inputs reported by Gangyuan, Andrew, and Tongzhou, and the steel scrap sales reported by Gangyuan, Andrew, and Tongzhou by failing to support data reported in its questionnaire responses with source documents.

The Department finds that the use of facts otherwise available is warranted with respect to the white paper inputs reported for Gangyuan and Andrew, the brown paper inputs reported by Gangyuan, Andrew, and Tongzhou, and the steel scrap sales reported by Gangyuan, Andrew, and Tongzhou, pursuant to section 776(a) of the Act. Specifically, the Department finds that reliable information is not available on the record with respect to the white paper inputs, brown paper inputs, and the steel scrap sales. Despite the Department's attempts during verification to substantiate the Shaoxing Metal Companies' reported data regarding white paper, brown paper, and steel scrap sales, as reported in the Shaoxing Metal Companies' questionnaire responses, the Department was unable to verify the white paper inputs reported for Gangyuan and Andrew, the brown paper inputs reported by Gangyuan, Andrew, and Tongzhou, and the steel scrap sales reported by Gangyuan, Andrew, and Tongzhou. Specifically, the verifiers found that the Shaoxing Metal Companies' presented verification packages that were not prepared as requested

in the verification outline, (e.g., missing translations of documents; no allocation methodology worksheets for consumption ratio calculations) for white paper, brown paper, and steel scrap sales, with the result that none of the factor data could be verified with the exception of white paper for Tongzhou and steel scrap sales for Company X. See Shaoxing Metal Verification Report, at 33-34, 46.

The Department also finds that the Shaoxing Metal Companies failed to provide the information requested by the Department in a timely manner and in the form or manner requested, making the application of facts available appropriate, pursuant to section 776(a)(2)(B) of the Act. The Shaoxing Metal Companies failed to follow the instructions detailed in the Department's verification outline. The purpose of submitting a verification outline to respondents is to give respondents sufficient notice about the types of information and source documents that the Department will examine, and to afford respondents sufficient time to compile the information. On May 19, 2008, the Department informed the Shaoxing Metal Companies that it intended to verify the FOP information submitted by the Shaoxing Metal Companies between June 2, and June 6, 2008. The verification outline sent to the Shaoxing Metal Companies on May 19, 2008, 14 days prior to the start of verification, stated that "the purpose of providing this agenda in advance of the actual verification is to allow you to brief the appropriate company personnel on the items to be covered and the type of documentation required to verify each item. The enclosed agenda is not necessarily all inclusive and we reserve the right to request any additional information or materials necessary for a complete verification." The Department also requested that counsel for the Shaoxing Metal Companies "reiterate to your client the statutory requirement for verification and note that… it is in your client's interest to cooperate since failure to permit verification may result in the Department relying on adverse "facts available" under section 776 of the Tariff Act of 1930, as amended (the Act)." See Letter from Catherine Bertrand to Gregory Menegaz, counsel for the Shaoxing Metal Companies, (May 19, 2008) ("Shaoxing Metal Companies Outline") at 1-2. In addition, the verification outline stated the following:

> To facilitate the verification process, we have described the types of source documents that we will require to support the submitted data. As you are aware, the time available for the verification is limited. Consequently, we ask that the necessary information be gathered by the appropriate personnel **prior** to the verifiers' arrival. The verifiers will require copies of certain documents for the verification report. Copies of supporting documentation, along with **English translations** of all pertinent information, should be made **prior** to the verification… .
>
> [I]t is the **responsibility** of the respondent to be **fully prepared** for this verification. If your client is not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified, which may result in our basing the results of this administrative review on the facts available, possibly including information that is adverse to the interests of your client.

See id. (emphasis added in original).

At no time prior to the verification did the Shaoxing Metal Companies contact the Department seeking additional time to prepare for verification, or asking questions about the verification

procedures, which documents to prepare for verification, or the verification outline. During verification, the Department found that, when we attempted to verify the Shaoxing Metal Companies' white paper inputs, brown paper inputs, and steel scrap sales, none of the packages prepared for the four companies, Gangyuan, Andrew, Tongzhou, and Company X, were translated, there were no indicators of the amounts to be verified, and there was no written explanation of the allocation methodology used to calculate the inputs. The Department informed the Shaoxing Metal Companies that the prepared white paper packages, brown paper packages, and steel scrap sale packages were not prepared in the manner requested in the verification outline and requested that these packages be revised according to the verifier's instructions. The verifier informed the Shaoxing Metal Companies that they would continue on to the next verification item and return to verifying the white paper inputs, brown paper inputs, and steel scrap sales, if time permitted. We were able to verify Tongzhou's white paper inputs and Company X's steel scrap sales once the packages were revised and translated according to our instructions. However, the Department was unable to verify the white paper inputs for Gangyuan and Andrew, the brown paper inputs for Gangyuan, Andrew, and Tongzhou, and the steel scrap sales for Gangyuan, Andrew, and Tongzhou because we were unable to return to these items. Moreover, because we were unable to verify Gangyuan's and Andrew's white paper input, we also were unable to verify Gangyuan's and Andrew's market economy purchases of white paper. Furthermore, because we were unable to verify the Shaoxing Metal Companies' brown paper inputs, we also were unable to verify its market economy purchases of brown paper. See the Shaoxing Metal Verification Report, at 33-34, 37; see the Shaoxing Metal Verification Report, at 33-34, 37, and 46-47. Accordingly, with respect to Gangyuan's and Andrew's white paper inputs; Gangyuan's, Andrew's, and Tongzhou's brown paper inputs; and Gangyuan's, Andrew's, and Tongzhou's brown paper steel scrap sales; the Department finds that use of facts otherwise available is appropriate because these factors were unverified, and the Shaoxing Metal Companies failed to provide the information requested in the verification outline, pursuant to sections 776(a)(2)(B) and (D) of the Act.

The Department additionally finds that the use of facts otherwise available is warranted pursuant to section 776(a)(2)(C) of the Act when the respondent "significantly impedes a proceeding." In the instant case, the Shaoxing Metal Companies were unprepared to complete the verification of Gangyuan's and Andrew's white paper inputs; Gangyuan's, Andrew's, and Tongzhou's brown paper inputs; and Gangyuan's, Andrew's, and Tongzhou's brown paper steel scrap sales. This unpreparedness, as detailed above, significantly impeded the verification. Specifically, we note that Department officials began examining these FOPs, but had to discontinue work on those items as information for them was not ready. As a result, Department officials moved on to other verification items from the outline. We gave the Shaoxing Metal Companies an opportunity to gather the necessary data for the unprepared items, with the intention that the verifiers could revisit those presumably rectified items, time permitting. However, the verifiers did not have time to revisit and complete verification of those items within the verification's time constraints.[26] The packages presented to the Department officials did not include translations of the supporting documentation or contain any indicators of which numbers interspersed throughout the Chinese text supported the reported numbers the verifiers were attempting to verify. See the Shaoxing Metal Verification Report, at 33-34. The use of facts otherwise available is intended to "induce respondents to provide Commerce with requested information in

[26] We note that "complete" in this context means completing the items started rather than verifying the entire response, distinct from Shaoxing Metals Companies' observation that the Department does not verify or "audit" the entire response.

a timely, complete, and accurate manner." See Nat'l Steel Corp. v. United States, 870 F. Supp. 1130, 1134 (CIT 1994). Here, the Shaoxing Metal Companies were provided with an outline of the required information 14 days prior to the Department's arrival at the Shaoxing Metal Companies. The information requested by the Department over the course of verification was available on site and could have been prepared prior to the Department's arrival at verification. Instead, the Shaoxing Metal Companies significantly impeded the verification process and failed to respond to the Department's requests in a timely manner, resulting in the Department's inability to complete the verification of Gangyuan's and Andrew's white paper inputs; Gangyuan's, Andrew's, and Tongzhou's brown paper inputs; and Gangyuan's, Andrew's, and Tongzhou's steel scrap sales.

As described in detail above, Gangyuan's and Andrew's white paper inputs, Gangyuan's, Andrew's, and Tongzhou's brown paper inputs; and Gangyuan's, Andrew's, and Tongzhou's steel scrap sales could not be verified, and thus the application of facts available is required. Additionally, because the Shaoxing Metal Companies failed to act to the best of their ability in providing the requested information that was in its sole possession, the application of an adverse inference is appropriate, pursuant to section 776(b) of the Act. While the Shaoxing Metal Companies contend that their inability to complete preparing the packages for these items was a result of the time available for verification, the Department notes that the Shaoxing Metals Companies' failure to prepare packages, as instructed in the verification outline, for numerous inputs, is not minor.

The Shaoxing Metal Companies had these documents on site but were not presented, as prepared to the Department's instructions, in a timely or complete manner, significantly impeding the verification. See section 776(2)(c) of the Act. We note that the Department did not elect to forego verification of these items on the outline due to time constraints, but was impeded from doing so by the Shaoxing Metal Companies' failure to cooperate to the best of their ability. Therefore, we find the application of partial AFA is warranted.

For the reasons discussed above, we have determined that the Shaoxing Metal Companies have failed to cooperate by not acting to the best of its ability to comply with a request for information and an adverse inference is warranted, pursuant to section 776(b) of the Act, with respect to Gangyuan's and Andrew's white paper; Gangyuan's, Andrew's, and Tongzhou's brown paper inputs; and Gangyuan's, Andrew's, and Tongzhou's steel scrap sales. Therefore, as partial AFA for Gangyuan's and Andrew's white paper, we have assigned Tongzhou's verified highest-usage ratio of white paper as the usage ratio for Gangyuan's and Andrew's consumption of white paper. Additionally, as partial AFA for the Gangyuan's, Andrew's, and Tongzhou's brown paper, we have assigned the highest usage-ratio of brown paper placed on the record by the Shaoxing Metal Companies as each company's consumption of brown paper. Finally, as partial AFA for Gangyuan's, Andrew's, and Tongzhou's steel scrap sales, we have not granted them a by-product offset for the final determination. Due to the proprietary nature of these calculations, see the Shaoxing Final Analysis Memo for further discussion.

F. Reporting of Wire and Wire Rod

Petitioner argues that the Department incorrectly valued the Shaoxing Metal Companies' per-unit consumption of wire rod because the Shaoxing Metal Companies reported that wire rod was drawn by one of the Shaoxing Metal Companies, Company X, during the POI and that this valuation is incorrect because the Department found at verification that the Shaoxing Metal

Companies book their consumption of wire and not wire rod in their raw material accounting records. See Petitioner's Case Brief dated July 10, 2008, at 6. Accordingly, Petitioner argues that the Department's verification shows that steel wire was the main input used in the Shaoxing Metal Companies' hanger production. It argues that, therefore, the per-unit consumption of steel wire should be the input used in calculating the Shaoxing Metal Companies' normal value for the final determination.

Additionally, Petitioner argues that because the Department was unable to verify Company X's allegedly demolished wire drawing workshop, the record of this proceeding does not conclusively demonstrate that Company X had an active wire drawing production line during the POI. Petitioner also argues that the Department was unable to reconcile Company X's reported wire drawing costs because the Shaoxing Metal Companies failed to provide the fiscal year ("FY") 2007, audited financial statement for Company X. Therefore, Petitioner concludes that the Department should not value the Shaoxing Metal Companies' per-unit consumption of wire rod because the Department was unable to verify Company X's reported cost for drawing the wire rod.

In rebuttal, the Shaoxing Metal Companies argue that the Department should continue to value the Shaoxing Metal Companies' per-unit consumption of steel wire rod. The Shaoxing Metal Companies contend that the Department determined in the Preliminary Determination to treat the Shaoxing Metal Companies as a single entity and Petitioner has not objected to this decision. As a single entity, the Shaoxing Metal Companies state that the Department is required to calculate normal value based on an accurate measurement of the Shaoxing Metal Companies' actual raw material acquisition costs and business model. Accordingly, the Shaoxing Metal Companies contend that Petitioner's suggestion that the Department should value the Shaoxing Metal Companies' normal value starting with steel wire would be an inaccurate measurement of their business model. The Shaoxing Metal Companies state that this would be an inaccurate measurement of normal value because the verification exhibits show that the Shaoxing Metal Companies purchased wire rod that was processed into steel wire by their affiliated supplier.

Additionally, the Shaoxing Metal Companies contend that the Department did verify that the affiliated supplier's wire drawing workshop had been transferred to a location that is adjacent to the Shaoxing Metal Companies' production facility. The Shaoxing Metal Companies note that the Department observed quantities of steel wire rod within this wire drawing workshop at verification. The Shaoxing Metal Companies argue that Petitioner's argument that the Department was unable to verify the affiliated supplier's wire drawing factors is incorrect. According to the Shaoxing Metal Companies, the Department was able to verify these wire drawing factors to the affiliated supplier's audited financial statement for 2007. Based on the numerous amount of information that was successfully verified regarding the Shaoxing Metal Companies' consumption of wire rod, the Shaoxing Metal Companies conclude that the Department must continue to value their consumption of wire rod.

Department's Position:

The Department disagrees with Petitioner with respect to the valuation of steel wire rod rather than steel wire. In the Preliminary Determination, the Department determined that, based on the evidence on the record in this investigation, including the evidence presented in Gangyuan's questionnaire responses, we preliminarily found that Gangyuan is affiliated with Andrew, Tongzhou, and Company X pursuant to sections 771(33)(E)-(G) of the Act, based on ownership

and common control. See Preliminary Determination, 73 FR at 15729. In addition to being affiliated, we stated that these individual companies have production facilities for similar or identical products that would not require substantial retooling and there is a significant potential for manipulation of production based on the level of common ownership and control, shared management, and an intertwining of business operations. See 19 CFR 351.401(f)(1) and (2); see Shaoxing Metal Companies Affiliation Memo. Thus, we found that they should be considered as a single entity for purposes of this investigation. See 19 CFR 351.401(f).

We have also verified the information on the record and find the circumstances of the Shaoxing Metal Companies' operations which led to the collapsing determination unchanged from what had been reported. While we did not verify the production process of Company X because the structure which housed the steel wire drawing machinery was demolished after the POI, our analysis is retrospective. That is, changes that may occur at a company after the reporting period do not impugn the veracity of the information reported to us, even if we are unable to verify the entire scope of the reported information due to certain types of changes within the company (e.g., the demolition of physical plant). Additionally, we did not find anything at verification that casts doubt on Company X's reported factors, except for water, because we were informed prior to verification that the Company X had been sold to another company and we were able to verify the wire drawing factors to the audited January-August 2007 financial statement. See Shaoxing Metal Verification Report at 13, 16, 23-24, 28-31.

Since no information has been placed on the record to compel the Department to reverse our collapsing determination, we continue to find that Gangyuan, Andrew, Tongzhou, and Company X are a single entity pursuant to sections 771(33)(E)-(G) of the Act, based on ownership and common control. We also continue to determine that they should be considered as a single entity for purposes of this investigation. See 19 CFR 351.401(f). Consequently, we will continue to calculate an antidumping duty margin for the single entity using the sales information and FOPs for Gangyuan, Andrew, Tongzhou, and Company X.

Therefore, for the final determination, we will continue to calculate the Shaoxing Metal Companies' normal value starting at the wire rod input because we verified Company X's steel wire rod consumption during the POI. Moreover, since we continue to determine that the companies are a single entity, it is appropriate to calculate the normal value using Company X's consumption of the main direct material input, steel wire rod.

G. Management and Administrative Labor

The Shaoxing Metal Companies argue that the Department should continue excluding the Shaoxing Metal Companies' management labor in the calculation of total materials, labor, and energy ("MLE"). According to the Shaoxing Metal Companies, this would constitute double-counting of the Shaoxing Metal Companies' management and administrative labor that is normally captured in the selling, general, and administrative ("SG&A") expenses of the calculated financial ratios. However, if the Department determines that management labor should be included in total MLE, the Shaoxing Metal Companies argue that the Department should only apply 50 percent of the reported management labor hours to normal value based on the limited amount of time each day that management spends on the factory floor, as reported at verification.

In rebuttal, Petitioner argues there is no record evidence, beyond statements from verification, that the Shaoxing Metal Companies' management employees spend a limited amount of time

each day involved in the production process. In fact, Petitioner notes that the Shaoxing Metal Companies have also indicated that these employees are directly involved in the production process. Therefore, Petitioner contends that the Department cannot use the Shaoxing Metal Companies' requested allocation for management labor because there is no direct evidence that supports this allocation.

Department's Position:

We agree with Petitioner that including the Shaoxing Metal Companies' reported management labor (MANAGELAB) and management 2 labor (MANAGELAB2) in the total calculation of MLE would not result in double-counting. In the calculation of financial ratios, all labor types are included in the denominator of MLE, not in the numerator of the SG&A ratio. See PSF Final at Comment 16. Therefore, we find that there is no double-counting of the Shaoxing Metal Companies' reported MANAGELAB and MANAGELAB2 with the surrogate SG&A financial ratio. However, we will only include the reported MANAGELAB2 in the calculation of NV because MANAGELAB2 includes management labor involved in the production of subject merchandise, whereas MANAGELAB includes management labor that are not involved in the production of subject merchandise. See Shaoxing Metal Verification Report, at 42-43.

We do not agree with Petitioner that there is no evidence on the record of this proceeding demonstrating that the managers included in the Shaoxing Metal Companies' reported MANAGELAB2 spent limited time on the production floor. During verification, officials from the Shaoxing Metals Companies reported that they spend a few hours on the factory floor each day directing production. See Shaoxing Metal Verification Report, at 43. This information can be relied upon by the Department. The CIT has upheld the Department's practice of finding that information gathered at verification is "considered more reliable than unverified information." See Timken U.S. Corp. v. United States, 28 CIT 1828, 1832 (2004). Additionally, the CIT has found that there is "due deference given to verification reports" because "not giving deference 'would leave every verification effort vulnerable to successively subsequent attacks.'" FAG Kugelfischer Georg Schafer AG v. United States, 131 F. Supp. 2d 104, 133 (CIT 2001). Accordingly, we find that there is evidence demonstrating that the Shaoxing Metal Companies' directors, which comprise MANAGELAB2, spent limited time on the production floor.

At verification, we were informed by officials for each of the Shaoxing Metal Companies that the reported MANAGELAB2 only included the labor hours for each company's director, which we tied to each company's Factory Headquarters Attendance Sheet for April 2007. See Shaoxing Metal Verification Report, at 42-43, VE 17. Additionally, we were informed by company officials that these directors only spent a few hours each day on the production floor. See id. Based on the statements contained within the Shaoxing Metal Verification Report, we find that there is sufficient information on the record demonstrating that the Shaoxing Metal Companies' managers reported in MANAGELAB2 only spent a few hours each day on the production floor. Therefore, because the Shaoxing Metal Companies reported MANAGELAB2 based on a full-work day but the record evidence shows that these managers only spent part of the day involved in the production of subject merchandise, we will adjust the reported MANAGELAB2 by the percentage of time spent on the production floor for each day. See Shaoxing Final Analysis Memo.

H. Retroactive Implementation of Amended Preliminary Determination

The Shaoxing Metal Companies argue that the Department should retroactively set the Shaoxing Metal Companies' calculated cash deposit rate in the Amended Preliminary Determination from the date of publication of the Preliminary Determination to the date of publication of this final determination. While the Department typically declines to make changes in a final determination retroactive to the preliminary determination, the Shaoxing Metal Companies contend that the ministerial error was so severe that not making this retroactive change would be punitive to the Shaoxing Metal Companies. Accordingly, the Shaoxing Metal Companies conclude that the Department should adhere to the court's finding that antidumping duty laws are intended to be remedial by setting the effective date of the Shaoxing Metal Companies' amended preliminary cash deposit rate back to the date of publication of the Preliminary Determination.

In rebuttal, Petitioner argues that the Department should not retroactively set the Shaoxing Metal Companies' calculated cash deposit rate in the Amended Preliminary Determination from the date of publication of the Preliminary Determination to the date of publication of this final determination. Petitioner contends that the Shaoxing Metal Companies have not cited to any precedent that supports this action and in fact concede that the Department typically declines to make changes in a final determination retroactive to a preliminary determination. Accordingly, while the Shaoxing Metal Companies contend that the preliminary rate is punitive, Petitioner concludes that no retroactive changes need to be made because the preliminary rate is only preliminary and will be replaced by the rate calculated in the final determination.

Department's Position:

In the Amended Preliminary Determination, we corrected certain ministerial errors with respect to the weighted-average dumping margin calculation for the Shaoxing Metal Companies resulted in a change of the margin from 164.54 percent to 56.98 percent. See Amended Preliminary Determination, 73 FR at 20018. Additionally, we issued amended cash deposit instructions for the Shaoxing Metal Companies to CBP instructing CBP to collect a cash deposit based on the amended weighted-average dumping margin on entries on or after April 14, 2008, the date of publication of the Amended Preliminary Determination. See http://addcvd.cbp.gov/. However, we note that the amended cash deposit instructions did not instruct CBP to collect a cash deposit based on the amended weighted-average dumping margin on entries on or after March 25, 2008, the date of publication of the Preliminary Determination.

We agree with the Shaoxing Metal Companies that, for this final determination, we should retroactively change the effective date of the amendment to the date of publication of the Preliminary Determination. We find that making this retroactive change is in keeping with the Federal Circuit's observation that "antidumping duty laws are remedial not punitive." See NTN Bearing Corp. vs. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995). Additionally, because the Department, recently in Nails from the PRC, made a change effective retroactively to the date of the preliminary determination, we find that the Department has precedent for making this retroactive change. See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 22. Therefore, for all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the Preliminary Determination, March 25, 2008, and before the publication date of the Amended Preliminary Determination, April 14, 2008, we will instruct CBP to apply the cash deposit rates

from the Amended Preliminary Determination. Future instructions to CBP that may be affected by this change will reflect these corrections.

Comment 9: Shanghai Wells

A. Demurrage Revenue

Shanghai Wells argues that, in the Preliminary Determination, the Department inadvertently reduced gross unit price by adding the per-unit demurrage revenue amount that Shanghai Wells reported to the Department as a negative figure. Shanghai Wells urges the Department to correct this calculation error, by revising the U.S. net price calculation string in the SAS programming language used in the final determination to reflect the following correction: usnetpriu = (grsupru **– revdemurr**) – gupadju – discrebu – dcmmoveu – intlmoveu – ceprofit – cepsellu.

In rebuttal, Petitioner contends that Shanghai Wells' explanation of the demurrage revenue calculation is untimely and should not be accepted. Additionally, Petitioner argues that the allocated methodology for demurrage revenue observed at verification was on a sale-by-sale basis. Petitioner requests that, for the final determination, the Department should reject Shanghai Wells' explanation and apply the correction to the one sale for which revenue demurrage allocation methodology was verified. In the alternative, Petitioner requests that the Department should limit the claimed demurrage revenue by a certain percentage of the demurrage expenses incurred for sales with a non-zero demurrage revenue amount.

Department's Position:

We disagree with Shanghai Wells' proposed revision to the U.S. net price calculation string for demurrage revenue. We also disagree with Petitioner's argument that Shanghai Wells' reported revenue and expenses should be rejected but for one sale. The Department verified the methodology in which the demurrage was allocated and reported to us without any discrepant findings. See Shanghai Wells' Verification Report at 13.

In the Preliminary Determination, we accounted for post-sale adjustments of demurrage revenue (reported as a negative number) as an addition to the gross unit price and demurrage expenses (reported as a positive number) incurred as a deduction included in the international and U.S. movement charges. Our practice with respect to revenue earned, such as freight revenue, from sales is to add the revenue to the gross unit price.[27] We note that the placement of the CEP post-sale adjustments for demurrage revenue and expenses were incorrect within the calculation strings of the margin calculation program. Although Shanghai Wells argues that we incorrectly added demurrage revenue when we should have subtracted it, the argument is moot for the final determination. Because of the circumstances regarding the calculation of the demurrage expenses in relation to the revenue earned from demurrage, we will deduct the demurrage revenue from the allocated per-unit demurrage expenses, where applicable, resulting only in a deduction of the actual demurrage expense incurred, which inherently accounts for Shanghai Wells' demurrage revenue earned by reducing the associated expenses. See Shanghai Wells

[27] See e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 51781 (September 11, 2007) unchanged in final results.

Final Analysis Memo for a detailed explanation of the changes in the calculation string for demurrage revenue and expenses.

B. Commission Revenue

Shanghai Wells argues that, in the Preliminary Determination, the Department did not properly deduct the Hong Kong Wells commission expenses incurred during the POI from gross unit price because, in non-market economy proceedings, such commission expenses already are captured in the surrogate SG&A expense ratio. Shanghai Wells argues that, for the final determination, the Department should account for the commission revenue that Wells USA earned during the POI, reported in the variable, COMMREV, for each CEP transaction.

In rebuttal, Petitioner asserts that Shanghai Wells' argument regarding the addition of commission revenue to the gross unit price is unreasonable and must be rejected. Petitioner argues that the Department's practice has been to reject commissions paid among affiliated parties, which are not arm's length transactions. Petitioner contends that Shanghai Wells has not shown that the commission rate represented a normal, market-based commission by showing that such commissions were also paid to unaffiliated parties for similar services. Petitioner urges the Department to reject Shanghai Wells' argument to add the commission to the gross unit price.

Department's Position:

We disagree with Shanghai Wells' argument regarding the treatment of commission expenses or revenue. We note that, in the Preliminary Determination, we classified Shanghai Wells' U.S. affiliate's downstream sales as CEP sales. We have not changed that determination. The Department's practice with respect to any commissions paid to an affiliate is unambiguous. The Department has repeatedly determined that, where a commission is paid between affiliated parties and may not be at arm's length, it is the Department's practice to disregard that commission, and instead deduct the actual selling expenses incurred by the sales agent from the CEP, pursuant to section 772(d)(1)(C) and (D) of the Act.[28] Moreover, the CIT has repeatedly upheld our practice of treating commissions paid by the producer to an affiliated company as an intra-company transfer, rather than as a true commission, because to do so would have led to "double-counting."[29]

To avoid double-counting, we have deducted the indirect selling expenses reported by Shanghai Wells from starting price rather than the commission paid to the U.S. affiliate for sales made to unaffiliated customers during the POI. For the same reasons as stated above, we also disagree with Shanghai Wells' argument that the reported commission revenue earned by the U.S. affiliate should be added to the gross unit price. Consequently, for the final determination, we will not make any adjustments to the starting price for commissions either earned or incurred within the Shanghai Wells family of companies for sales of subject merchandise to the United States during the POI.

[28] See, e.g., Stainless Steel Sheet and Strip in Coils From France: Final Results of Antidumping Administrative Review, 70 FR 7240 (February 11, 2005), and accompanying Issues and Decision Memorandum, at Comment 6.

[29] See, e.g., Mitsubishi Heavy Indus., Ltd. v. United States, 54 F. Supp. 2d 1183, 1193 (CIT 1999).

C. Wells USA's Indirect Selling Expenses

Shanghai Wells argues that, contrary to the Department's verification finding, the Department should conclude that it verified the same indirect selling expense ratio as submitted to the Department in the last Shanghai Wells supplemental questionnaire response dated March 4, 2008, and should not make any adverse inferences related to the Department's alleged erroneous verification finding. Shanghai Wells argues that, during the verification, the Department erroneously noted that the ratio reported for indirect selling expenses for CEP sales differed from the ratio provided at verification. Shanghai Wells argues that the Department verified the same indirect selling expense ratio which Shanghai Wells had revised and reported to the Department in its supplemental questionnaire response dated March 4, 2008. Thus, Shanghai Wells argues that, in the final determination, the Department should disregard its verification finding that the ratio used to calculate the indirect selling expenses for CEP sales, WUSISE, differs from the ratio submitted in the indirect selling expense package provided by Wells USA.

No other interested parties commented on this issue.

Department's Position:

We agree with Shanghai Wells that the Department inadvertently overlooked the indirect selling expense ratio reported in their supplemental questionnaire response, which is consistent with the indirect selling expense ratio reviewed at verification.

Therefore, for the final determination, we will amend our verification finding that the ratio used to calculate the indirect selling expenses for CEP sales differs from the ratio submitted in the indirect selling expense package provided by Wells USA at verification. We will continue to apply the most recent indirect selling expense ratio to CEP sales, which was previously submitted to the Department in a supplemental questionnaire response, without any adverse inferences.

D. Treatment of Water and Lubricant Lard

Shanghai Wells argues that, for the final determination, the Department should continue to treat as factory overhead the small amount of water and solid lubricant lard that Shanghai Wells utilized to lubricate factory machinery and that the company treats as factory overhead expenses in the ordinary course of business.

Shanghai Wells further argues that it did not report water or solid lubricant lard in its FOP database because: (1) the company does not track the consumption of these ancillary materials in the ordinary course of business, and (2) the Department's surrogate overhead ratio already accounts for these indirect materials. Moreover, Shanghai Wells also contends that the water and solid lubricant lard are used to lubricate production machinery, and are not incorporated as direct materials in the finished product.

In rebuttal, Petitioner argues that water and lubricant lard (and drawing powder), whether or not categorized as overhead by the company, should be valued as inputs in the FOPs and included in the margin calculations. Petitioner argues that, in the recent Nails from the PRC determination, the Department applied a surrogate value to drawing powder for the wire drawing process. See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum, at

Comment 17. Petitioner contends that Shanghai Wells' consumption of water and lubricant lard need to be accounted for in the calculation of the normal value. Additionally, Petitioner argues that drawing powder should likewise be treated similarly to the Shaoxing Metal Companies' consumption of drawing powder as a FOP.

Department's Position:

We do not agree with Shanghai Wells with respect to the treatment of water and lubricant lard as overhead expenses used as machinery lubrication. The verification report states that: "Analysts asked about the materials used in the wire drawing stage. Analysts noted that the wire drawing stage includes use of drawing powder, water and a wire drawing lubricant or lard-like material that is mixed with the water." See Shanghai Wells Verification Report at 34-35.

First, we have determined to value water and lubricant lard, the unreported materials, as FOPs for the final determination in accordance with section 773(c)(3)(B) of the Act because water and lubricant lard are used in the production process specifically for drawing wire rod into steel wire, the main input of the subject merchandise. As stated above in Comment 2, in prior proceedings, the Department valued certain materials, which the respondent had claimed were overhead, as a direct material based on a determination that these materials were required for a particular segment of the production process. Specifically, in Nails from the PRC, various unreported materials categorized as "consumable" overhead materials were determined to be FOPs because they were regularly replaced and required in the production process. See Nails from the PRC, 73 FR 33977, and accompanying Issues and Decision Memorandum, at Comment 20E. Similarly, in Diamond Sawblades, the Department treated inputs such as machine oil, isopropyl alcohol, and acetone, which were not physically incorporated into the finished product, as direct materials because they were consumed in the production process. See Diamond Sawblades, 71 FR 29303, and accompanying Issues and Decision Memorandum, at Comment 2. Alternatively, the Department did not treat grinding wheels, abrasive paper, and steel wire brush as direct inputs in Diamond Sawblades because these inputs were not replaced so regularly as to represent direct materials. See id. However, we find that water and lubricant lard, in the instant proceeding, are regularly replaced and are required in the production process and, therefore, should be considered FOPs. See Shanghai Wells Verification Report at 35, 37; Shanghai Wells Final Analysis Memo.

Second, the Department notes that Shanghai Wells incorrectly argues that the Department should *continue* to categorize water and lubricant lard as overhead expenses.[30] Prior to verification, which took place after the Preliminary Determination, the record of the investigation does not contain *any* reference to water or lubricant lard consumed by Shanghai Wells in the production of hangers. See Shanghai Wells Verification Report at 2, 35. Therefore, the Department did not treat water and lubricant lard as overhead expenses in the Preliminary Determination because Shanghai Wells did not disclose use of these materials prior to verification. Additionally, we note that Shanghai Wells did not describe these inputs in its overview of the production process submitted in its questionnaire responses dated December 7, 2007, or March 4, 2008. As was the case for a respondent in Nails from the PRC, because Shanghai Wells did not report these inputs, whether or not the materials are considered overhead expenses, as being used in the production process, the Department was not aware that either water or lubricant lard was a part of the wire-drawing process. It was only at verification during the factory tour that the Department first

[30] See Shanghai Wells' Rebuttal Brief dated July 15, 2008, at 6.

discovered that Shanghai Wells used water and lubricant lard during the production process. See Shanghai Wells Verification Report at 2, 35.

In accordance with sections 776(a)(2)(A) and (B) of the Act, we find that Shanghai Wells failed to report the consumption of water or lubricant lard, materials that we consider FOPs despite the Department's request that Shanghai Wells report all of its FOPs in its original questionnaire. See October 17, 2007, letter to Shanghai Wells transmitting the antidumping questionnaire at Part D of the questionnaire ("Standard NME Questionnaire"). Therefore, we find that the application of facts available is warranted. See Comment 8A for a discussion of Section 776(a) of the Act.

Further, because water and lubricant lard were not reported, Shanghai Wells' reported FOPs did not fully verify within the meaning of section 776(a)(2)(D) of the Act. The inclusion of these inputs is essential to the reported FOPs database because the Department's calculation of normal value is based on the valuation of all direct inputs. That is, because these inputs were not included in the FOP database, the normal value for Shanghai Wells is necessarily understated.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Shanghai Wells did not inform the Department that its FOPs were not complete until the Department discovered the fact at verification, despite clear direction to do so in the questionnaire sent to Shanghai Wells. Further, the omission of an FOP not used by other respondents of a product that the Department has just begun investigating is not something the Department could discern prior to verification. Thus, the Department did not have the opportunity to allow Shanghai Wells to correct its deficient data. Accordingly, section 782(d) of the Act does not prevent application of partial AFA under these circumstances. See Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1332-38 (CIT 2002).

For these reasons, the Department has determined to use partial AFA to value these two inputs, as specified under sections 776(a)(2)(A) and (B) of the Act. As stated above in Comment 8A, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of the respondent if it determines that the respondent has failed to cooperate to the best of its ability. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870, reprinted in 1994 U.S.C.C.A.N. at 4199. In making its determination the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. The Federal Circuit has explained that "acting to the best of its ability" means that a respondent must "do the maximum it is able to do." See Nippon, 337 F.3d. at 1382-83.

As stated above, Shanghai Wells had multiple opportunities to inform the Department of these additional inputs. Respondent Shaoxing Metal Companies reported water as a FOP on December 10, 2007, but Shanghai Wells failed to do so. Despite Shanghai Wells' categorization of overhead items versus direct materials, the Department's request for this information was unambiguous. For example, the Department requested that "{f}or each stage of the process you must indicate the material inputs, the processing time, the types of equipment used, the number of people involved in the process, and any subsidiary products generated as a result of the

production of the merchandise under consideration." See Standard NME Questionnaire at page D-2. In prior cases, the Department has been able to retrieve the necessary information in respondents' books and records to account for unreported FOPs in the margin calculation program. However, at verification, the company stated that consumption records of water and lard are not maintained within the books and records. See Shanghai Wells Verification Report at 37. Thus, the Department was unable to obtain consumption data for these inputs, as is the normal practice for unreported factors discovered at verification. Despite any reporting problems it may have encountered, Shanghai Wells did not indicate to the Department, pursuant to section 782(c) of the Act, that it had a problem with reporting complete factors information. At a minimum, Shanghai Wells should have sought clarification from the Department whether water and lubricant lard should be reported as inputs. Instead, at verification, the Department discovered that the FOP database was incomplete and was missing these inputs.

Therefore, for all of the reason stated above, the Department finds that, pursuant to section 776(b) of the Act, Shanghai Wells has failed to cooperate to the best of its ability with regard to its unreported FOPs data for water and lubricant lard. Because Shanghai Wells failed to fully cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of Shanghai Wells in selecting from among the facts otherwise available. See section 776(b) of the Act. By doing so, we ensure that Shanghai Wells will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review. See SAA at 870, reprinted at 1994 U.S.C.C.A.N. at 4199.

Consequently, as facts otherwise available, the Department will use the public, ranged consumption ratios reported by Gangyuan, one company within the Shaoxing Metal Companies entity, in its December 10, 2007, section D database, as a proxy for Shanghai Wells' consumption of FOPs to which we will apply the appropriate surrogate values placed on the record of the investigation. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum, at comment 1A (where the Department used one respondent's factor consumption information as a proxy for the unreported factor of another respondent as partial AFA).

Specifically, as AFA we are using Gangyuan's public version water consumption ratio for Shanghai Wells' unreported water consumption because this is the highest publicly available water consumption ratio on the record. For Shanghai Wells' lubricant lard, because Gangyuan did not use lubricant lard in the production of subject merchandise and as there is no lubricant lard consumption information on the record, the Department will use Gangyuan's water consumption ratio a second time as a proxy for the lubricant lard. We find this to be appropriate because Shanghai Wells uses two lubricant inputs in the wire rod drawing process, and we are using the only record information on lubricant inputs as the AFA plug for each lubricant input used by Shanghai Wells. See Shanghai Wells Verification Report at 35. Given the limited information on the record, we find this to be a sufficient basis for an adverse inference. For a detailed description of the Department's treatment of unreported water and lubricant lard for Shanghai Wells, see Shanghai Wells Final Analysis Memo.

E. Treatment of Market Economy ("ME") Purchase

Shanghai Wells argues that because there is no record evidence that the ME trading company which sold a material input[31] to Shanghai Wells was eligible for or received any subsidies or that it passed any such benefits on to Shanghai Wells, the Department must follow its normal practice in the final determination and value the Shanghai Wells' material input based on the price that Shanghai Wells actually paid for this input.[32]

In rebuttal, Petitioner argues that the Department correctly excluded prices paid for ME-purchased inputs because of suspected subsidization. Petitioner also argues against Shanghai Wells' reference to CTVs, where the Department did not reject the prices of inputs purchased through a trading company because the inputs originated in countries that maintain export subsidies. Petitioner urges that the Department re-determine its decision in CTVs, arguing that exempting sales made from a subsidy-recipient through a trading company or reseller in a third-country creates a loophole which can be exploited to manipulate the Department's policy to exclude ME prices that are believed or suspected to be subsidized or dumped.

Department's Position:

The Department disagrees with Shanghai Wells with respect to using the ME prices it paid for an input. In the Preliminary Determination, the Department used a surrogate value for certain material inputs purchased from ME suppliers, the prices for which the Department had reason to believe or suspect may have been subsidized. See Preliminary Determination, 73 FR at 15733. As stated in the Preliminary Determination, it is the Department's practice to exclude prices that it had reason to believe or suspect may have been dumped or subsidized, instead using a surrogate value, rather than the purchase price paid. See id.

"It is the Department's longstanding practice to consider that goods determined to be dumped or subsidized remain so whether or not they are sold through third-country trading companies." See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) ("Lock Washers"), and accompanying Issues and Decision Memorandum at Comment 1 (citing to Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000), and accompanying Issues and Decision Memorandum at Comment 1 (deeming the appropriate transactions for determining export price were not third country trading company sales of subject merchandise to the United States; rather, the appropriate transactions were the sales between the trading company's PRC supplier and the trading company itself)).

Although the Department previously determined in CTVs that it was improper to reject the ME prices paid to a Hong Kong trading company for inputs that originated in a country that maintains export subsidies, as we stated in Lock Washers, "the decision in that case does not represent our practice and should not be followed because it did not take proper account of the directive in the legislative history for the Department to avoid using any prices which it has

[31] The name of this input is business proprietary information. See Shanghai Wells Final Analysis Memo.

[32] Shanghai Wells cites to Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) ("CTVs") and accompanying Issues and Decision Memorandum at Comment 8.

reason to suspect may be dumped or subsidized prices." See Lock Washers, 70 FR 28274, and accompanying Issues and Decision Memorandum, at Comment 1. We also disagree with Shanghai Wells' contention that there is no record evidence that the trading company from whom Shanghai Wells purchased the input was eligible for or received any subsidies or that it passed any such benefits on to Shanghai Wells.

The Department has consistently recognized the directive to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum, at Comment 1. Here, we have reason to believe or suspect that the prices paid for the input in question may have benefitted from industry-wide subsidies. Specifically, the Department has conducted countervailing duty investigations with affirmative final determinations of subsidies occurring in the same industry as the material purchased by Shanghai Wells. See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006). Accordingly, we find that the evidence of subsidization within this industry is a sufficient basis to give us reason to believe or suspect that prices of Shanghai Wells' input may be subsidized, notwithstanding being sold through a third-country trading company. Therefore, for the final determination, we will continue to use a surrogate value for Shanghai Wells' ME purchases of a material input, and not use the ME prices for this input, which we have reason to believe or suspect may be subsidized.

F. Elimination of Credit Expenses from Constructed Export Price ("CEP") Profit

Shanghai Wells argues that in the Preliminary Determination the Department inadvertently included imputed credit expenses in the calculation of CEP profit which is contrary to the Department's practice. Shanghai Wells argues that to correct this error, the Department should exclude imputed expenses from the calculation of CEP profit.
No other interested parties commented on this issue.

Department's Position:

We disagree with Shanghai Wells with respect to the Department's treatment of imputed credit expenses within the CEP profit calculation. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Although Shanghai Wells correctly cited cases in which the Department declined to count both imputed expenses and actual expenses for the same expense category in an element of the CEP profit methodology when calculating CEP profit in market economy countries, Shanghai Wells misinterprets the application of this methodology in NME cases.

As described in section 772 of the Act, the CEP profit calculation methodology contains three elements: Total Actual Profit, Total Expenses, and Total United States Expenses. As described by the Federal Circuit in a case arising under a market-economy context:

> The statute describes the CEP profit as the product of total actual profit multiplied by the applicable percentage. § 1677a(f)(1). The applicable percentage is calculated by "dividing the total United States expenses by the total expenses."

> § 1677a(f)(2)(A). Total United States expenses are defined as those expenses enumerated in section 1677a(d)(1) and (2). § 1677a(f)(2)(B). Finally, total expenses in this case include "expenses incurred with respect to the subject merchandise sold in the United States." § 1677a(f)(2)(C)(i).

See SNR Roulements v. United States, 402 F.3d 1358, 1362 (Fed. Cir. 2005).

The Federal Circuit explained that the issue was "whether it is lawful for Commerce to account for credit and inventory carrying costs with an imputed expense when calculating total United States expenses and to account for the same costs with the presumption that they are embedded in a respondent's actual expenses when calculating total expenses." See id. 402 F.3d at 1361. There, the Federal Circuit concluded that "Commerce may account for credit and inventory carrying costs using imputed expenses in one instance and using actual expenses in the other." See id.

In the Department's CEP profit calculation in market economy cases, in the "applicable percentage," the Total United States Expenses numerator contains imputed credit and inventory carrying expenses, consistent with section 772(f)(2)(B) of the Act, and the Total Expenses denominator contains actual amounts accounting for the same expenses. The Total Actual Profit element also accounts for these same expenses with actual amounts, under the presumption that they are also embedded in the actual amounts reported by the respondent. See id., 402 F.3d at 1361-63 (affirming the Department's methodology). Thus, each element of the CEP profit calculation accounts for the same expenses. Further, because the Total Expenses element accounts for these expenses using actual costs, the Department's practice is not to include additional amounts as imputed costs in Total Expenses, because doing so would double count the expenses and understate the "applicable percentage." See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551 (July 12, 2001) ("AFBs"), and accompanying Issues and Decision Memorandum at Comment 12

Consistent with the CEP profit methodology in market economy cases described above, in the cases cited by Shanghai Wells, AFBs and SSB, the Department explained that imputed expenses were not to be added because they were already included once, accounted for as actual expenses in the Total Expenses denominator, and including them a second time as imputed expenses would result in double-counting. See id.[33]

In NME cases the Department also includes amounts for credit expenses and inventory carrying costs in the calculation of CEP profit only once in each component of our calculation. The total U.S. selling expenses (e.g., commissions, further manufacturing, repacking, indirect selling expenses, inventory carrying costs and credit) includes imputed expenses and the surrogate profit ratio which is based on the surrogate company's actual expenses also includes actual amounts that account for the same expenses. Therefore, each component of the NME CEP profit calculation, like that of the market economy cases, includes amounts for credit expenses and inventory carrying costs, whether as imputed expenses or actual expenses of the surrogate. Thus,

[33] See Notice of Amended Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Luxembourg, 67 FR 4701 (January 31, 2002) ("SSB").

we will make no changes to the CEP profit calculation in Shanghai Wells' margin calculation program for the final determination.

G. Sales to Customer X: Export Price ("EP") or CEP

Petitioner argues that, for the final determination, Shanghai Wells' EP sales to Customer X in the United States should be reclassified as CEP sales. Petitioner contends that Shanghai Wells did not provide any evidentiary support at verification that the joint venture between the former owners of Customer X and Shanghai Wells was discontinued after new owners acquired Customer X.

In rebuttal, Shanghai Wells argues that sales from Shanghai Wells to Customer X have been properly reported as EP sales. Shanghai Wells argues that it has provided ample record evidence during the course of the investigation and during the on-site verification supporting its statements that Customer X was a customer and not affiliated with Shanghai Wells.

Department's Position:

We disagree with Petitioner with respect to the reclassification of Shanghai Wells' EP sales to Customer X. The Department verified Shanghai Wells, its U.S. affiliate, and the parent company. Record evidence indicates that the former owners of Customer X sold some, but not all assets of Customer X to the new owners of Customer X. While the shares of the joint venture with Shanghai Wells were assets of Customer X when Customer X was held by the former owners, there is no record evidence indicating that these shares were transferred along with other assets of Customer X to the new owners of Customer X. There is some evidence that the shares were not transferred: Shanghai Wells reported that it is not affiliated with any of the customers listed in the Shanghai Wells' U.S. Sales listing and that Customer X is not affiliated with any companies within the Wells family of companies. See Shanghai Wells' Supplemental Section C questionnaire response, dated February 7, 2008, at 6-7. Moreover, we uncovered no contradictory information at verification. Accordingly, record evidence does not support affiliation between Customer X and Shanghai Wells or justify a change in the classification of Shanghai Wells' sales to Customer X from EP to CEP. We intend, however, to look closer at this matter in the first administrative review of Shanghai Wells.

H. Payment Terms

Petitioner notes the Department's verification finding that the payment terms for the verified sales differed from the payment terms that Shanghai Wells reported in its Section C questionnaire response. Petitioner also notes that for some examined sales, the date of payment was not consistent with the payment terms verified by the Department. Petitioner, however, did not provide any argument related to what it believes the Department should do with this information.

In rebuttal, Shanghai Wells argues that the reported payment terms in the sales database in no way affects the accuracy of the dates of payment or the manner in which credit expenses were calculated. Moreover, Shanghai Wells notes that Petitioner only observed the Department's finding at the verification without offering a suggestion for the Department to make any changes to the payment terms. Therefore, Shanghai Wells contends that the Department should not make

any changes with respect to the payment terms, dates of payment or credit expense calculations for the final determination.

Department's Position:

We agree with Shanghai Wells with respect to payment terms. The Department noted the discrepant payment terms as observed over the course of the verification process. See Shanghai Wells Verification Report at 2. The Department agrees with Shanghai Wells that the payment terms did not affect the dates of payment or the calculation methodology for credit expenses. Thus, we have not made any changes with respect to payment terms, dates of payment, or credit expense calculations for the final determination.

I. Truck Freight and Brokerage

Petitioner argues that the margin calculation for Shanghai Wells in the Preliminary Determination did not account for the weight conversion as the basis for the calculation. Specifically, Petitioner contends that the surrogate value for truck freight and brokerage are on a per-kilogram basis, while Shanghai Wells' merchandise is on a per-carton basis, which Petitioner argues, understates the truck freight and brokerage expenses incurred. Thus, for the final determination, Petitioner argues that the Department should alter the SAS programming language as follows: dcmoveu = (grsupru/grsuprukg) * ((dinlftpu * trucksv_usd) + bhsv_usd);

Shanghai Wells did not comment on this issue.

Department's Position:

The Department agrees with Petitioner that we inadvertently based brokerage and handling and freight on a per-carton basis rather than per-kilogram basis. We have made the appropriate changes to the margin calculations. See Shanghai Wells Final Analysis Memo.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish this final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date